

HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR

SINGLE BENCH: HON'BLE SHRI SUBODH ABHYANKAR, J

WRIT PETITION NO.6627 OF 2017

Ganesh @ Gannu

Vs.

State of Madhya Pradesh and others

Present:

For petitioner : Shri Ghanshyam Pandey, Advocate.

For respondents: Shri G.P. Singh, Government Advocate

Whether Approved for Reporting : Yes

Law Laid Down: (i) While passing an order of externment, the proximity of offence alleged against the petitioner from the date of passing of the order is a relevant fact and has to be dealt with accordingly.

(ii) The observations made regarding the callous approach made by the District Magistrates in passing the order of externment without going through various judgments passed by this Court.

Significant Paragraph Nos.9, 10, 11 and 12.

ORDER

(Passed on this the 17th day of August, 2017)

In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of order dated 24.4.2017 passed by the Commissioner, Indore in appeal affirming the order dated 29.11.2016 passed by District Magistrate, Khandwa in Externment Case No.24/2016 whereby the District Magistrate has passed the order invoking the provisions of Section 5 of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990.

2. In brief the facts of the case are that the Superintendent of Police, Khandwa submitted a report on 6.10.2016 in respect

of petitioner Ganesh @ Gannu on the ground that he is a resident of village Borisaray, Police Station new Harsood, District Khandwa and he is continuously involved in criminal activities since 2008 and his presence in the city has created serious law and order situation and as such no person is coming forward to depose against him in the court of law.

3. A show cause notice was issued to the petitioner in this behalf by the District Magistrate Khandwa and a reply was also filed by the petitioner to the show cause notice although neither the show cause notice nor the reply is placed along with the writ petition.

4. Considering the reply filed by the petitioner, the District Magistrate passed the order dated 29.11.2016 whereby the petitioner is prohibited to enter into the boundaries of District East Nimar, Khandwa and the adjoining districts i.e. Burhanpur, Khargone, Dewas, Betul, Harda and Indore for a period of one year.

5. Learned counsel for the petitioner has vehemently argued that false proceedings have been initiated against the petitioner under the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 for the reason that although the petitioner is said to be involved in as many as 16 criminal cases but he has been acquitted in 11 cases and 5 cases are still pending. The learned counsel has also filed copies of orders of acquittal.

6. It is further submitted by the learned counsel for the petitioner that a patent illegality has been committed by the

District Magistrate in not recording satisfaction regarding the apprehension in the minds of the victims to depose against the petitioner and no clear cut opinion has been formed by the learned District Magistrate which has resulted in passing the impugned order. In support of his contention, learned counsel has relied upon the Division Bench judgment of this Court in the case of **Ashok Kumar Patel Vs State of M.P. and others** reported in **2009 (4) MPLJ 434**.

7. On the other hand, learned counsel for the State has submitted that no illegality has been committed in passing the impugned order either by the District Magistrate or by the Commissioner in an appeal as the petitioner is a habitual offender being involved in as many as 16 offences under various penal provisions including IPC, M.P. Excise Act, Dowry Prohibition Act, Arms Act, SC/ST Act and his record clearly reveals that he is a man of criminal antecedent and cannot be restrained merely by registering cases against him.

8. Heard learned counsel for the parties and perused the record.

9. From a bare perusal of the impugned order, it is apparent that the petitioner has been externed only on the ground that as many as 16 criminal cases were registered against him from the year 2008 to 2016. It is also apparent from this order that the District Magistrate, Khandwa has taken into account the offences committed by the petitioner from 2008 to 2013 only whereas there is no reference to any of the offences committed by the petitioner from 2014 to 2016 and it is only

mentioned that after 2013, the petitioner was involved in 9 other offences under different sections and also that the acquittal of the petitioner from the 11 offences does not mean that he has not committed any offence. Thus, the cardinal principle governing order of externment has been given a complete go-bye, i.e. the proximity of the earlier offences actually committed or abetted from the date of the impugned order.

10. In the case of **Ashok Kumar Patel (Supra)**, the Division Bench of this Court held as under :-

“8. The expression “is engaged or is about to be engaged” in the commission of offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or under section 506 or 509 of the Indian Penal Code, 1860 or in the abetment of any such offence, shows that the commission of the offence or the abetment of such offence by the person must have a very close proximity to the date on which the order is proposed to be passed under section 5(b) of the Act of 1990. Hence, if a person was engaged in the commission of offence or in abetment of an offence of the type mentioned in section 5(b), several years or several months back, there cannot be any reasonable ground for believing that the person is engaged or is about to be engaged in the commission of such offence.

10. The second condition which must be satisfied for passing of an order of externment against a person is that in the opinion of the District Magistrate, witnesses are not willing to come forward to give evidence in public against such person by a reason of apprehension on their part as regards safety of person or property. Construing a *pari materia* provision in section 27 of the City of Bombay Police Act, 1902 in *Gurbachan Singh vs.*

The State of Bombay and another, AIR 1952 SC 221, the Supreme Court observed:-

“The law is certainly an extra-ordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitute a menace to the safety or the public residing therein.”

11. In the instant case, the District Magistrate has in the impugned order only baldly stated that the list of offences registered against the petitioner reflects that he is a daring habitual criminal and because of this there is fear and terror in the public and has not recorded any clear opinion on the basis of materials, that in his opinion witnesses are not willing to come forward to give evidence in public against such person by a reason of apprehension on their part as regards safety of their person or property. In most of the cases, Challans have been filed by the Police in Court obviously after examination of the witnesses under section 161 of Criminal Procedure Code and the cases are pending in the Court. There is no reference in the order of District Magistrate that witnesses named in the Challans filed by the Police are not coming forward to give evidence against the petitioner in Court. Hence, in the absence of any existence of material to show that witnesses are not coming forward by a reason of apprehension to danger to their person or property to give evidence against the petitioner in respect of the alleged offences, an order under section 5(b) of the Act of 1990 cannot be passed by the District Magistrate by merely repeating the language of section 5(b) of the Act of 1990.”

(emphasis supplied)

11. In the present case also there is no reference of the witnesses who have been named in the charge sheets filed against the petitioner and who have not been able to depose against the petitioner but only a passing reference has been made in order to complete the formalities. In appeal also, all these points have not been considered. In the circumstances, the impugned order dated 29.11.2016 passed by the District Magistrate and the order dated 24.4.2017 passed by the Commissioner in appeal are hereby quashed.

12. Before parting with the case, it would be necessary to comment on the callous approach adopted by the District Magistrate and police officials in securing an order of externment under the provisions of M.P. Rajya Suraksha Adhiniyam, 1990 which finally gets quashed by the High Court. In most of the cases which travel up to this Court, it is observed that many important mandatory provisions of the Adhiniyam are given a complete go-bye which situation can certainly be avoided by the concerned authorities by simply carefully going through the catena of judgments delivered by this Court in the cases relating to externment and then pass the final order.

13. The petition is allowed with the aforesaid observations.

(Subodh Abhyankar)
Judge
17/08/2017