

**1 THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.18600/2020**  
**Rajjan Yadav Vs. The State of M.P. and others**

**Heard Through Video Conferencing**  
**Jabalpur, Dated:31/5/2021**

Shri Vasant Roland Daniel, Advocate for petitioner.

Shri Ankit Agrawal, Government Advocate for  
respondents/State.

This petition under Article 226 of the Constitution of India has  
been filed seeking the following reliefs:-

- “1. That, this Hon'ble Court may kindly be please to  
set aside the order of the Commissioner Jabalpur  
respondent no.1 dated 11.11.2020.
2. That, the Hon'ble Court may kindly be pleased to  
pass any other relieves in accordance with law.”

It is the case of the petitioner that an order of externment was  
passed on 6/11/2016 by the District Magistrate, Jabalpur, which was  
complied by the Petitioner. Thereafter, on 26/3/2018 the SP, Jabalpur  
vide his recommendation No.PA/Jabalpur/Reader/IJB/18/18 prayed  
the District Magistrate, Jabalpur to take action against the petitioner  
under Section 5 of the M.P. Rajya Suraksha Adhiniyam.

By order dated 29/9/2018 the District Magistrate passed an  
order of externment thereby externing the petitioner from the limits  
of District of Jabalpur and other adjoining Districts, namely, Mandla,  
Dindori, Narsinghpur, Seoni, Katni, Damoh and Umaria for a period  
of one year. The petitioner preferred an appeal against the order dated  
29/8/2018 before the Commissioner, Jabalpur, which was registered  
in case No.91/Externment/18, which was decided on 20/2/2019 and

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the order dated 29/9/2019 passed by the Collector, Jabalpur was set aside because the District Magistrate had not even recorded the statement of the department and accordingly, the matter was remanded back to decide afresh after giving full opportunity to the petitioner to put forward his defence. On 8/7/2020 an FIR was registered against the petitioner and other two co-accused persons in Police Station Khamariya, Jabalpur for offence under Sections 327, 294, 506, 427/34 of IPC in Crime No.184/2020. It is submitted that again on 8/7/2020 itself, the S.P. Jabalpur sent a recommendation for taking action under M.P. Rajya Suraksha Adhiniyam, in the light of the order passed by the Commissioner, Jabalpur dated 20/2/2019, Annexure P/2 as well as in the light of the fact that Crime No.184/2020 has been registered against the petitioner, and prayed that an order of externment for a period of one year may be passed. Accordingly, a show-cause notice was issued by the District Magistrate, Gwalior on 8/7/2020. It is submitted that the petitioner submitted his reply. The respondents examined their witness and after considering the material available on record, the District Magistrate, Jabalpur passed the order dated 28/7/2020 thereby externing the petitioner from the limits of Jabalpur and adjoining Districts, namely, Mandla, Dindori, Narsinghpur, Seoni, Katni, Damoh and Umaria for a period of one year. Being aggrieved by the said order, the petitioner

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preferred an appeal, which has been dismissed by the Commissioner, Jabalpur by order dated 11/11/2020 passed in case No. 12/Externment/2020.

Challenging the orders passed by the District Magistrate as well as the Commissioner, Jabalpur, it is submitted by the counsel for the petitioner that while passing an order of externment, the stale cases cannot be taken into consideration. The Sub Inspector, Police Station Khamariya, District Jabalpur in her evidence has admitted that from the year 2017 till 2020 neither any criminal case except Crime No.184/2020, was registered against the petitioner nor any preventive measure was taken. It is further submitted that it is clear from the order of the District Magistrate that he has relied upon the stale criminal cases which were registered against the petitioner, according to which, two criminal cases were registered against the petitioner in the year 1997, three criminal cases were registered in the year 1998, one case each was registered in the years 2004, 2006, 2009, 2010, 2013, four criminal cases were registered in the year 2014 and one criminal case each was registered in the year 2016 and 2017. It is further submitted that the Commissioner, Jabalpur has held that although the order of externment was also passed against the petitioner in the year 2018, but still his criminal activities could not be controlled and in the year 2020 one more offence under Sections

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327, 294, 506 and 427/34 of IPC was also registered. It is submitted that the coordinate Bench of this Court in the case of **Ramlakhan Yadav Vs. State of M.P. and others passed in Writ Petition No.18605/2020 by order dated 9/2/2021** has quashed the externment proceedings and the present case is squarely covered by it. It is further submitted that this Court by order dated 1/3/2021 had directed the State Counsel to verify as to whether the case of the petitioner is squarely covered by the judgment passed by the coordinate Bench of this Court in the case of **Ramlakhan Yadav (supra)** or not. It is further submitted that the alleged offences should have close proximity to the order of externment and there has to be some material on record to show that the witnesses are not coming forward to give statement against the exteree. It is submitted that in view of the fact that no offence was registered against the petitioner in the year 2017, 2018 and 2019 and only one crime was registered against the petitioner in the year 2020, which was not for committing any heinous offence, the order of externment is harsh one and is liable to be quashed.

*Per contra*, the counsel for the State opposed the writ petition, however, fairly conceded that the present case is squarely covered by the judgment passed by the coordinate Bench of this Court in the case of **Ramlakhan Yadav (supra)**. It is further submitted that in the said

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case there was no material to show that the witnesses are not coming forward, however, in the present case the statement of Police Sub Inspector was recorded, who has stated that the witnesses are afraid of the petitioner and they are not coming forward and even in most of the cases, the reports are not lodged against the petitioner in the police station. However, it is fairly conceded that except this bald statement, the respondents have not filed any documentary evidence to show that the witnesses are not coming forward to depose against the petitioner or they are afraid of him.

Heard learned counsel for the parties.

It is well established principle of law that two conditions are required to be satisfied for passing an order of externment:

Firstly, the alleged offence should have close proximity to the order of externment; and,

Secondly, there has to be some material to show that the witnesses were not coming forward to give statement against the proposed externee.

The respondents have filed their return and has also produced the record of the Court of District Magistrate, Jabalpur.

From the order-sheets of the Court of District Magistrate, Jabalpur it is clear that on 8/7/2020, the SP Jabalpur made an application for taking action against the petitioner under Sections 4,

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5, 6 of M.P. Rajya Suraksha Adhiniyam and on the very same day notices were issued and the case was fixed for 10/7/2020. On 10/7/2020, the counsel for the petitioner appeared before the District Magistrate, Jabalpur and prayed for time to file reply as well as to argue the matter. On the very same day, statement of Sub Inspector Nirupa Pandey was recorded and a liberty was given to the counsel for the petitioner to cross-examine her, however, the counsel for the petitioner prayed for time to file reply to the show-cause notice, to cross-examine the witness as well as to argue the matter. Accordingly, time was granted to the petitioner to cross-examine the witness as well as to file the reply and to finally argue the matter. On the same day, the copy of application filed by the SP, Jabalpur alongwith documents were supplied to the counsel for the petitioner. On 14/7/2020 a detailed reply was filed by the petitioner and the arguments were made by the counsel for the petitioner. Since the witness was not present, therefore, the case was adjourned for cross-examination of the witness. Later on, the Sub Inspector Nirupa Pandey appeared before the District Magistrate and accordingly, she was bound over for the next date. On 17/7/2020 the prosecution witness Sub Inspector Nirupa Pandey was cross-examined by the petitioner and accordingly, the case was fixed for delivery of judgment and accordingly, on 28/7/2020 the final order was passed

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by the District Magistrate, Jabalpur.

Although the petitioner has not challenged the manner in which the proceedings were conducted, but from the order-sheets, it appears that the District Magistrate has acted in a haste. Notices were issued on 8/7/2020, which were affixed on the house of the petitioner and the counsel for the petitioner appeared on 10/7/2020 and prayed for time to file reply and argue the matter. On the very same day, the prosecution witness was examined and the cross-examination was deferred on the request of the petitioner. Thereafter, on the next day the reply was filed, but it appears that the counsel for the petitioner was directed to finally argue the matter even prior to cross-examination of the witness. Thereafter, on 17/7/2020 the prosecution witness was cross-examined and the case was fixed for delivery of judgment and no further argument was heard in the light of the cross-examination of the prosecution witness. The manner in which the proceedings were conducted by the District Magistrate, Jabalpur cannot be approved. Cross-examination is the only important tool in the hands of the wrongdoer to prove his innocence. Cross-examination of a witness is not a mere formality. Without adverting to the question as to whether the District Magistrate should have recorded the examination-in-chief of the prosecution witness on day one without supplying the copy of the application filed by the S.P.,

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Jabalpur along with its documents and without awaiting for the reply of the petitioner, this Court is of the considered opinion that compelling the petitioner's counsel to argue the matter finally before cross-examination of a witness and thereafter not giving any opportunity of hearing to the petitioner's counsel to argue in the light of the cross-examination of the witness, is a complete go by to the principles of natural justice. It is clear that no opportunity was granted to the Petitioner to advance arguments on the basis of cross-examination of the witness. It is also not clear from the order-sheet dated 17/7/2020, as to whether the petitioner had sought time to lead his evidence or not or the petitioner had expressed that he does not want to lead his evidence.

Further, it is apparent from the order dated 28-7-2020, passed by the District Magistrate, Jabalpur, the practice of cut and paste has been adopted. The District Magistrate, Jabalpur in the impugned order, has cut and paste its earlier order dated 29-9-2018, and thereafter, has cut and paste the examination-in-chief of Ms. Nirupa Pandey, Sub-Inspector, thereafter cut and paste the show cause notice issued to the petitioner and the reply submitted by the petitioner. Thereafter, the District Magistrate, cut and paste the cross-examination of Ms. Nirupa Pandey, Sub-Inspector. Thereafter, in para 13, the District Magistrate, Jabalpur, without considering the



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nature of criminal cases registered against the petitioner, its outcome, as well as without considering that whether the stale cases can be taken into consideration for passing the order of externment, directly jumped to the conclusion that since, one more criminal case was registered against the petitioner in the year 2020, therefore, his activities have made him liable for his externment from the District Of Jabalpur and its neighboring Districts Mandla, Dindori, Narsinghpur, Seoni, Katni, Damoh and Umaria. In para 13, except by mentioning that he has gone through the various orders passed by the Courts, nothing has been discussed as to why the activities of the petitioner are detrimental to the law and order requiring him to remove him from the District of Jabalpur and its neighboring District. It is well established principle of law that reasons are heartbeat of an order. The Supreme Court in the case of **Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan**, reported in (2010) 9 SCC 496 has held as under :

**46.** The position in the United States has been indicated by this Court in *S.N. Mukherjee* in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as “the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review”. In *S.N. Mukherjee* this Court relied on the decisions of the US Court in *Securities and Exchange Commission v. Chenery*

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*Corpn. and Dunlop v. Bachowski* in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of

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incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* EHRR, at 562 para 29 and *Anya v. University of Oxford*, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

If the impugned order passed by the District Magistrate, Jabalpur is tested on the anvil of law laid down by Supreme Court in the case of **Kranti Associates (Supra)**, then it is clear that the impugned order lacks reasons which clearly show that there was a complete non-application of mind by the District Magistrate, Jabalpur.

Thus, from the procedure which was adopted by the District Magistrate, Jabalpur, as well as also from the unreasoned order passed by the District Magistrate Jabalpur, it is clear that the District Magistrate Jabalpur has acted malafidely and arbitrarily. On earlier occasion also, the order of externment was passed against the

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petitioner, without even recording the statement of any departmental witness and therefore, the order of externment was set aside and the matter was remanded back. The manner in which the District Magistrate, Jabalpur, has conducted the proceedings, it is clear that he just wanted to complete the formalities of recording the statement of a police officer. Further, the practice of cut and paste in the impugned order, as well as passing unreasoned orders, cannot be approved. An order of externment has serious civil as well as criminal consequences. By removing a person from his house, may also amount to depriving him from his livelihood, therefore, the authorities, should not adopt the practice of cut and paste and must pass reasoned orders.

Similarly, the Commissioner, while deciding the appeal did not adhere to the above mentioned loopholes in the procedure as well as the order passed by the District Magistrate. Right of appeal is not a mere formalities, and the Appellate Authority should not act mechanically while deciding the appeals and should minutely scrutinize the orders under challenge.

Under these circumstances, this Court is left with no option but to set aside the order dated 28-7-2020 passed by District Magistrate, Jabalpur and order dated 11-11-2020 passed by Commissioner, Jabalpur Division, Jabalpur.

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This petition is **allowed** with cost of Rs. 20,000/- to be deposited by the District Magistrate, Jabalpur, in the Registry of this Court within a period of 30 days from today. The petitioner shall be entitled to withdraw the cost.

**(G.S. Ahluwalia)**  
**V. Judge**

**Arun\***