

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	W.P.-11825-2021
Parties Name	Chandra Prakash @ Tinku Pandey Vs. The State of M.P. & Others.
Date of order	18/11/2021
Bench Constituted	Single Bench : Justice Purushaindra Kumar Kaurav
Order passed by	Justice Purushaindra Kumar Kaurav
Whether approved for reporting	Yes.
Name of counsel for parties	For Petitioner: Shri Prakash Upadhyay, Advocate For Respondent : Shri Devdatt Bhave, Panel Lawyer.
Law laid down	<p>Held :</p> <p>1. If the satisfaction recorded by the authority in an order of externment, is objective and is based on material on record then the Court would not interfere with the order passed by the authority, only because another view can possibly be taken. However, the satisfaction of the authority can be interfered with if the same is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of materials on record, being satisfied of the expediency/ necessity of passing an order of externment.</p> <p>2. Requirement of the law is existence of “some material” on record. It is not the “sufficiency of the material.” “Existence of the material” which is sine qua non of order of externment.</p>

	<p>3. The requirement of provision of Section 5(b) the Act of 1990 also provides that District Magistrate has to form a specific opinion that the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension or there is an apprehension on their part as regards the safety of their person or property.</p> <p>4. The exercise of such a power causes serious restrictions on the fundamental right to freedom under Article 19(1) of the Constitution and the fundamental right to personal liberty under Article 21 of the Constitution and unless the conditions mentioned under Section 5(b) of the Act of 1990 are strictly satisfied, an order of externment cannot be justified.</p> <p>5. A matter involving valuable fundamental rights i.e. Right to Freedom or Right to personal liberty needs to be considered seriously and in cases of this nature it is expected that the authorities should file para-wise reply atleast clarifying the factual position.</p>
Significant paragraph Nos.	9, 10, 11, 15, 17,18 -

ORDER
(18/11/2021)

In this petition under Article 226 of the Constitution, the petitioner is aggrieved by an order dated 30.06.2021 (Annexure-P/7) passed by Additional Commissioner, Rewa in an appeal under Section 9 of the M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred as

“The Act of 1990”), whereby an order of externment dated 03.02.2021 (Annexure-P/2) under Section 5 (b) of the Act of 1990 passed by District Magistrate, Rewa, directing externment of the petitioner, for a period of one year from revenue limits of District Rewa and other adjacent Disctricts Sidhi, Satna and Singraulli has been affirmed.

2. The relevant facts briefly are :-

i) On 07.12.2020 Superintendent of Police, Rewa on the basis of report received by him from Town Inspector P.S. Sirmour District, Rewa made recommendations to the District Magistrate for initiation of proceedings under Section 5 of the Act of 1990. It was reported that the petitioner is a habitual criminal and is involved in various criminal activities such as, possessing illegal arms, land grabbing and disturbing peace in the locality etc. From 1998 till the date of submission of the report, there were 17 criminal cases registered against him.

ii) The report further states that there was stronghold of the petitioner in the locality and a common citizen feels unsecured. He is involved in the commission of organised offences. Because of the terror of the petitioner neither anyone is reporting against him nor the witnesses are willing to come forward to give evidence in public. There was threat to public tranquillity and, therefore, it was necessary to prevent disturbance and to provide for security and maintenance of public order, an action under the provisions of the Act of 1990 was requested to be invoked.

iii) On 29.12.2020, upon receiving such a report, the District Magistrate, after registering Case No.72/Criminal/2020 recorded the statement of the Town Inspector, Sirmour-Rewa and

thereafter a show cause notice was directed to be issued to the petitioner for his appearance on 05.01.2021. It appears that during proceedings on 08.01.2021, the petitioner was represented through his counsel. The documents were supplied to him and he sought time to file the reply. Thereupon, the matter was fixed for reply on 15.01.2021. However, despite various opportunities, he chose not to file reply, therefore, the impugned order was passed.

iv) The petitioner challenged the said order of externment by filing a statutory appeal under Section 9 of the Act of 1990. However, vide order dated 30.06.2021, the appeal has also been dismissed by the Appellate Authority.

3. The precise submissions made by the petitioner are as under:-

i) The impugned order is vitiated on account of not providing him an opportunity of hearing to file the reply. The District Magistrate on 02.02.2021 had fixed the date for filing of the reply upto 03.02.2021, whereas, later-on behind the back of the petitioner on the same date i.e. 02.02.2021 impugned order was passed.

ii) There was no evidence against the petitioner so as to reasonably conclude that the people are not reporting the matters against him or the witnesses are not coming forward because of fear of the petitioner.

iii) The action of externment is further vitiated because not a single witness has been examined to substantiate the allegations except the police witnesses who happen to be the Town Inspector, Sirmour District Rewa.

iv) There is no application of mind, inasmuch as, if the

list of all criminal cases is considered, it is seen that the crime mentioned at Serial No.8 as Crime No.32/2012 is not against the petitioner, and out of 17 cases, only 8 cases are relating to the proceedings under Section 107 and 116 (3) of Cr.P.C. Moreso, in most of the cases he has been acquitted.

v) The proceedings are politically motivated which is apparent from Rojnamcha dated 03.11.2020, (Annexure-P/8) of the writ petition, wherein Police Station Sirmour states that the name of the petitioner had been removed as per order dated 06.04.2004 of the Superintendent of Police, Rewa from the "Gunda" list; after the year 2014 there are no complaints against him, on verification it was found that the petitioner was working as contractor; he was doing agricultural work and he is helping the police in various ways. However, the same police station on 11.11.2020 i.e. within 8 days prepared another Rojnamcha wherein the petitioner has been described to be an anti-social element, a threat to the public at large and has been shown to be continuously involved in criminal activities.

vi) The District Magistrate did not apply his mind before passing an order of externment the same can be seen from another order dated 03.02.2021 passed on the same date in case No. 59/2020 against Veerbhadra Singh (Annexure IA/1) wherein *verbatim* same expressions are used, therefore, it can be safely concluded that "cut and paste" theory is has been adopted in passing the order of externment.

4. The petitioner relies upon the judgements in the matter of **Kala Vs. State of M.P.¹**, **Ashok Kumar Vs. State of M.P.²**, **Vindheshwari Patel Vs. State of M.P.³**, **Asaf Ali Vs. State of M.P.⁴**, **Ganesh Vs. State of M.P.⁵**, **Mahesh Vs. State of M.P.⁶**, **Istfaq Mohammad Vs State of M.P.⁷** to substantiate his submissions.

5. Learned counsel for the respondent/State has opposed the writ petition and has made the following submissions:-

- i) The District Magistrate has passed the order on the basis of the material available on record which clearly shows that apart from the old cases, there are fresh cases also. Crime No.212/2020 and 281/2020 are relating to offence under Section 294, 323, 506 of Indian Penal Code, Section 3(1)(Dha), 3(2) (va) of the SC/ST Act and Section 107, 116(3) of Cr.P.C., in which challans have been filed before the competent Court, show that his criminal activities continues till date.
- ii) The action taken against the petitioner is not the punishment but to prevent him from causing any disturbance to public peace and tranquillity, therefore, the action cannot be faulted.
- iii) Before passing an order of externment, the only requirement is to see whether there exists any material on record

1 2004(4) MPLJ 234

2 2009(4) MPLJ 434

3 2018(3) MPLJ 645

4 2006(3) MPLJ 592

5 2018(3) MPLJ 291

6 2020 SCC Online MP 2066

7 2018(3) MPLJ 349

and, if the same exists, the requirements of law are met. “sufficiency of material” cannot be seen. Only “existence of material” can be examined. He relied upon the judgement in the case of State of NCT of Delhi Vs. Sanjeev⁸ and submits that the instant writ petition deserves to be dismissed specifically keeping in mind a long list of criminal cases which is placed on record at page 21 and 22 of the writ petition.

6. I have heard the learned counsels for the parties and also perused the original record of the District Magistrate, Rewa which has been called vide order dated 08.11.2021.

7. The District Magistrate has exercised power under Section 5 (b) of the Act of 1990 which is quoted herein below:

“(a)

(b) *“That there are reasonably grounds for believing that such person is engaged or is about to engaged in the commission of an 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 (45 of 1860) or in the abatement of any such offence, and when in the opinion of District Magistrate witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.”*

A plain reading of Section 5(b) of the Act of 1990 quoted above, would show that for passing an order of externment against a person, two conditions must be satisfied:-

(i) There are reasonable grounds for believing that a person is engaged or is about to be engaged in commission of an offence

8 (2005) 5 SCC 181

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 (45 of 1860) or in the abetment of any such offence and;

(ii) In the opinion of the District Magistrate, witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.

8. The scope and ambit of the provisions of Section 5 (b) of the Act of 1990 have been examined in great detail by the Division Bench of this court in the matter of Ashok Kumar Patel (Supra) and in paragraph No. 8, it has been considered that 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 abatement of any such offence, shows that commission of an 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. It has also been held that if a person was engaged in commission of an offence or in the abetment of offence of the type mentioned under Section 5(b), several years or several months back, there cannot be any reasonable ground for believing that a person is engaged or is about to be engaged in the commission of such offence.

9. It is true that an order directing externment should show existence of “some material” warranting such a course. Reference is to be made to “some material” on record and, if that is done, the

requirement of law are met. It is not the “sufficiency of material” but the “existence of material” which is *sine qua non* for passing such an order (See **State of NCT of Delhi Vs. Sanjeev** (supra)).

10. The Supreme Court in the matter of **Rahmat Khan @ Rammu Bismillah Vs. Deputy Commissioner of Police**⁹ has considered the validity of an order of externment under the provisions of Maharashtra Police Act, 1951. While setting aside the order of externment in Paragraph No. 26, the Apex Court has held that the authority passing the order must be satisfied by the expediency of passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the Court would not interfere with the order passed by the authority only because another view can possibly be taken. However, the satisfaction of the authority can be interfered with if the same is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of materials on record, being satisfied of the expediency/ necessity of passing an order of externment.

11. It is now well settled legal position that only long list of registration of criminal cases does not *ipso facto* give right to the District Magistrate to exercise power of externment under Section 5(b) of Act of 1990 unless he is satisfied on the basis of “some material” that such person is engaged or is about to be engaged in commission of an 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 (45 of 1860) or in the abetment of any such offence.

9 (2021) 8 SCC 362

The requirement of provision of Section 5(b) the Act of 1990 does not end here but it further provides that he has to form a specific opinion that the witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension or there is an apprehension on their part as regards the safety of their person or property.

12. Para 4 and 5 of the order passed by the District Magistrate are being reproduced herein below; -

“4. प्रकरण में अनावेदक के विरुद्ध पुलिस द्वारा पंजीबद्ध किये गये प्रकरण एवं अनावेदक के अपराधिक रिकार्ड तथा अभियोजन पक्ष द्वारा प्रस्तुत साक्ष्यों के अवलोकन से स्पष्ट होता है अनावेदक विगत कई वर्षों से नकबजनी, मारपीट, गुण्डागर्दी, अवैध आर्म्स रखने, जमीन में अवैध रूप से कब्जा करने एवं शांति भंग जैसे अपराधिक कृत्य एवं समाज विरोधी कार्यों में लिप्त रहा है। अनावेदक के विरुद्ध धारा 294, 323, 324, 326, 506, 307, 325, 451, 427, 336 ता.हि कायम कर विभिन्न न्यायालयों में प्रकरण प्रस्तुत किया गया। अनावेदक द्वारा भारतीय दंड विधान की विभिन्न धाराओं के तहत जो अपराध घटित किये गये हैं उनकी पुष्टि प्रकरण में संलग्न दस्तावेजों एवं अपराधिक सूची से होती है। म.प्र. राज्य सुरक्षा अधिनियम 1990 की धारा 5 अपराध करने के लिये आमदा व्यक्तियों को हटाये जाने से संबंधित है। जिसमें स्पष्ट है कि “ऐसा व्यक्ति किसी, ऐसे अपराध के जिसमें बल या हिंसा अर्न्तबलित है, या भ.द.सं. 1860(1860 का सं.45) के अध्याय 12,16 या 17 या उसकी धारा 506 या 509 के अधीन दण्डनीय किसी अपराध करने में या ऐसे किसी अपराध के दुष्प्रेरण में संलग्न है या संलग्न होने के आमदा है और जब जिला मजिस्ट्रेट की राय में ऐसे व्यक्ति के विरुद्ध साक्षीगण अपने शरीर या सम्पत्ति की सुरक्षा के बारे में उसकी ओर आशंका होने के कारण खुले आम साक्ष्य देने हेतु आगे-आने के लिए रजामन्द नहीं। अनावेदक के द्वारा भा.दं.वि. के तहत अपराध घटित किये हैं, जिससे स्पष्ट है कि अनावेदक की आपराधिक गतिविधियां निरंतर जारी है और आम नागरिक उसके विरुद्ध रिपोर्ट लिखाने व गवाही देने से डरते हैं।

5. उपरोक्त विवेचना के आधार पर तथा प्रकरण में उपलब्ध पुलिस द्वारा प्रस्तुत दस्तावेजों एवं अनावेदक के आपराधिक रिकार्ड के अवलोकन से स्पष्ट होता है कि अनावेदक थाना सेमरिया जिला रीवा के अन्तर्गत कई वर्षों से नकबजनी, मारपीट, गुण्डागर्दी, अवैध आर्म्स रखने, जमीन में अवैध रूप से कब्जा करने एवं शांति भंग जैसे अपराध किया है। पुलिस द्वारा समय-समय पर अनावेदक के विरुद्ध प्रतिबंधात्मक कार्यवाही करने पर भी उसके कार्यकलापों में कोई सुधार नहीं आया है। उपरोक्त कारणों से अनावेदक के विरुद्ध म.प्र. राज्य

सुरक्षा अधिनियम 1990 की धारा 5 (ख) के अन्तर्गत आदेश पारित किये जाने के पर्याप्त एवं युक्तियुक्त कारण है।”

13. If the impugned order of externment is examined under the anvil of the aforesaid pronouncement of law, it is seen that in all, there are 17 cases which are said to have been registered against the petitioner. Out of those 17 cases, 15 cases are from the year of 1998 to 2018. Case No. 16 is of the year 2020 which relates to the proceedings under Section 107 and 116(3) of Cr.P.C. and the last case again relates to year 2020 for offences punishable under Section 294, 323, 506 of Indian Penal Code and Section 3(1)(Dha), 3(2) (va) of SC/ST Act and Section 107, 116(3) of Cr.P.C. The date of incident of this case is 02.11.2020 and date of FIR is 09.11.2020. The petitioner, however, has specifically stated that Crime No. 32/2012 which is mentioned as scene No. 8 in Para 2 of the impugned order does not relate to him and he is not an accused in the said case which has not been controverted by the State in its reply.

14. The question that arises for consideration before this Court is whether the material referred in paragraph No.4 and 5 of the order of the District Magistrate can be described as “some material” or the same can be termed as “demonstrably perverse”, based on “no evidence” or “misleading evidence”. A careful reading of para 4 of the aforesaid order shows that the District Magistrate has referred the evidence relating to pendency of some old cases. Para 5 of the order records that on the basis of analysis (उपरोक्त विवेचना)(presumably he is referring to para-4). However, as stated above, para-4 only refers to criminal antecedents of the petitioner and nothing beyond it.

15. In view of the aforesaid this Court comes to the conclusion that this is a case of 'no material' at all so as to warrant exercise of power under Section 5(b) of the Act of 1990. The exercise of such a power causes serious restrictions on the fundamental right i.e. Right to Freedom under Article 19(1) of the Constitution and the fundamental right i.e. Right to personal liberty under Article 21 of the Constitution and unless the conditions mentioned under Section 5(b) of the Act of 1990 are strictly satisfied, an order of externment cannot be justified.

16. In the instant case, another interesting aspect is the report of the concerned Town Inspector of the police Station (Annexure-P/8 i.e. Rojnamcha dated 03.11.2020) which clearly indicates that the name of the present petitioner was removed from the '*Gunda*' list way back in the year 2004 and he is rather helping the police in many ways. However, surprisingly on 11.11.2020 (Annexure-R/1), the same police Station in another Rojnamcha records that the present petitioner is involved in continuous criminal activities and he is a threat to a common man. The respondent/State although has relied upon Rojnamcha dated 11.11.2020 but does not dispute existence of Rojnamcha dated 03.11.2020.

17. The petitioner specifically stated that in Crime No.32/2012 mentioned at Serial No. 8 of the list of cases, he is not an accused. The State Government has filed the reply but there is no denial of both the aforesaid aspects. A matter involving valuable fundamental rights i.e. Right to Freedom or Right to personal liberty needs to be considered seriously and in cases of this nature it is expected that the authorities should file para-wise reply atleast clarifying the factual position.

18. The perusal of both the paragraphs further clearly indicates that the order does not show any objectivity. There does not seem to be any satisfaction of “immediate engagement” or the possibility of his engagement in commission of an offence as mentioned in Section 5(b) of the Act of 1990. In view of the reasons mentioned in para 16 and 17 of this order, the order of District Magistrate can also be described as an order passed without “application of mind” and hence, the same does not satisfy the requirement of Section 5(b) of the Act of 1990.

19. In view of the aforesaid discussion, the instant writ petition is **allowed.** The order dated 03.2.2021(Annexure-P/2) and 30.6.2021(Annexure-P/7) passed by District Magistrate, Rewa and Additional Commissioner, Rewa respectively are hereby set aside. No order as to costs.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

Akanksha