



1

WP-37725-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 20th OF JANUARY, 2025WRIT PETITION No. 37725 of 2024*SHRI ANTRAM AWASE**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

Ms. Priyal Suryavanshi - Advocate for the petitioner.

Shri Yash Soni - Dy. Advocate General for the respondents/State.

.....

ORDER

This writ petition is filed by the petitioner Anantram Awase being aggrieved of order dated 23.01.2024 passed by the Court of Collector and District Magistrate, District Burhanpur, whereby petitioner has been externed from the District of Burhanpur and its neighboring districts for a period of one year. Technically his period of externment will come to an end on 22.01.2025 but the fact of the matter is that petitioner's insistence is that the matter be examined on its own merits and it be seen that the District Magistrate Burhanpur was acting in excess of his authority and was guided by extraneous consideration rather than considerations contained in law.

2. It is pointed out that, in the impugned order itself it is mentioned that there were 11 offences under the Forest Act registered against the petitioner from the year, 2018 to the year, 2023 and thereafter, in the year, 2019 case Crime No. 0358 of 2019 is registered against the petitioner under Section



147, 148, 149, 353, 332 & 427 of IPC and another case is registered in the year, 2022 as Case Crime No. 717 of 2022 under Sections 307, 147, 148, 149, 186, 353, 427 & 506 of IPC.

3. It is submitted that neither any statements have been recorded how the registration of these cases is danger to the public order and safety. It is further submitted that the petitioner is a Driver and he is being prosecuted for reasons other than the reasons contained in law.

4. Shri Yash Soni, learned Dy. Advocate General for the respondents/State when asked to demonstrate from the record that how Forest offences will come under the preview of Section 6 of M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as the "Adhiniyam, 1960") so to invoke its provisions so to pass an order of externment, he fairly admits that those cases will not fall within the ambit of Section 6 of the Adhiniyam of 1990 but two offences registered in the year, 2019 and 2022 will fall within Chapter XII of IPC and therefore, taking cognizance of those two cases, Collector/District Magistrate was competent to pass appropriate orders for externment.

5. When Shri Yash Soni, learned Dy. Advocate General for the State is asked to show from the record that which of the witnesses were examined to record their statements that presence of the petitioner is a danger to the safety and security or to the public order submits that, the statements could not be recorded because the locality in which petitioner is operating is a Tribal Infested Area and none of the Tribes came forward to depose against the petitioner.

6. When this Court asked Shri Soni, to give the names of the persons who



were approached by the District Administration for recording of their statements and then they refused to give their statements, Shri Soni fairly submits that the names of such persons are not available with him.

7. After hearing learned counsel for the parties and going through the record. Two things are crystal clear. One, Forest Offences have been mentioned in the impugned order by the District Magistrate without having any relevance.

8. Section 6 of the Act of 1990 provides for **Removal of persons convicted of certain offences** - "If a person has been convicted -

(a) of an offence,- (i) under Chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860); or (ii) under the Protection of Civil Rights Act, 1955 (22 of 1955); or

(b) twice, of an offence under Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956); or

(c) thrice, of an offence within a period of three years under Section 3 or 4 or 4-A of the Public Gambling Act, 1867 (3 of 1867), in its application to the State of Madhya Pradesh;

The District Magistrate may, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof or such area and any district or districts or any part thereof.... .."

9. Thus, it is evident that, firstly Forest Offences are not mentioned in Section 6 of the Adhiniyam of 1990. Secondly the word used is 'If a person



has been convicted' - but there is no material on record to show that, in regard to two offences under the Indian Penal Code, petitioner has been convicted. What is mentioned by the District Magistrate is that FIRs have been registered against him. Thus, without there being any conviction merely on the registration of FIR, petitioner could not have been subjected to invocation of Provisions of M.P. Rajya Suraksha Adhiniyam, 1990 and therefore, order of externment is apparently illegal and is set-aside.

10. The consequence will be setting aside of the appellate order passed by the learned Commissioner, Indore Division Indore dated 14.10.2024 passed in Case No. 0061/Jila Badar/2024.

11. Thus, orders passed by the District Magistrate and the Commissioner having been passed without application of mind and without explaining that how the Provisions of Section 6 of the Adhiniyam, 1990 could have been invoked against the intent of the legislature wherein, it is clearly mention that removal of persons convicted of certain offences and as we understand as student of law, merely lodging of FIR is not having meaning of being convicted, it is evident that District Magistrate has misused his authority.

12. Even the Divisional Commissioner who is a Senior Authority of the State Government has mechanically passed the impugned order.

13. It is evident that District Magistrate has tried to gloss over his own failure to record statements by misleading the Court by saying that none of the witnesses came forward to record statements. If this would have been true, than, the District Magistrate would have disclosed the names of such persons who were approached for recording of their statements and they had



refused to give their statements then Court could have obtained the report in this behalf, but this attitude of the District Magistrate to gloss over the matter is grossly inappropriate.

14. Accordingly, this writ petition is allowed. Impugned orders are set-aside.

15. Respondents/State shall bear the cost of this litigation and the harassment caused to the petitioner which is quantified @ Rs.50,000/- (Rupees Fifty Thousand only). State will be free to recover it from the concerned District Magistrate who had passed the impugned order.

16. Chief Secretary of the State of M.P. is requested to call a meeting of all the District Magistrates and give them confidence and directions to not to pass orders under political pressure without appreciating the true intent and meaning of the law as contained in the Act of 1990.

17. Dictated in open Court.

(VIVEK AGARWAL)
JUDGE

AR