

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 6391 OF 2021

Kiran Dattatraya Shedke ...Petitioner

Versus

The State Of Maharashtra And Ors. ...Respondents

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Mr. Harekrishna Mishra, Advocate for the Petitioner.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Satyawar Pawar (API), Panchavati Police Station, Nashik City,
Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 30th SEPTEMBER, 2022.

PER COURT :

1. The petitioner has challenged the order of externment dated 4th May, 2021 passed by the Deputy Commissioner of Police, Zone – I, Nashik City, Dist. Nashik under Section 56(1)(a)(b) of Maharashtra Police Act and order dated 27th August, 2021 passed by the Appellate Authority dismissing the Appeal preferred by Petitioner challenging the impugned order of externment under Section 60 of the Maharashtra Police Act.

2. The order of externment refers to seven cases and one N.C. Complaint registered against the petitioner. C.R. No.308 of

2015 was registered with Panchavati Police Station, Nashik for offence under Section 326, 324,, 323, 504 & 506 r/w Section 34 of Indian Penal Code (for short 'IPC') and Section 135 of Maharashtra Police Act. C.R. No.390 of 2017 was registered with Panchavati Police Station, Nashik for offences under Sections 307, 143, 147, 148 & 149 of IPC and Section 4(25) of the Indian Arms Act and Section 135 of the Bombay Police Act. C.R. No.438 of 2017 is registered with Panchavati Police Station, Nashik for offences under Sections 392, 397 r/w Section 34 of IPC. C.R. No.478 of 2017 is also registered with the same Police Station for offence under Section 142 of the Maharashtra Police Act. C.R. No.153 of 2018 relates to offences registered with Panchavati Police Station, Nashik under Section 307, 141, 143, 120-B of IPC and Section 135 & 142 of the Maharashtra Police Act. C.R. No.307 of 2020 was registered with Panchavati Police Station, Nashik under Section 142 of the Maharashtra Police Act. C.R.No.661 of 2020 was registered with the same Police Station for offences under Sections 387, 504, 506(2), r/w Section 34 of IPC and Sections 39 & 45 of the Maharashtra Money Lending (Regulation) Act, 2014. N.C. No.243 of 2020 was registered for offences under Sections 504 & 506 of IPC. The impugned order also refers to the statements of two persons recorded in camera and referred to as witnesses 'A' & 'B'.

The Petitioner was directed to be externed from the areas of Police Commissioner at Nashik City and Nashik Rural District for a period of one year.

3. The appeal preferred by the Petitioner challenging the aforesaid order was rejected vide order dated 27th August, 2021. Impugned order of externment was confirmed.

4. Undisputedly, the period of externment was one year. The petitioner has suffered the entire period of externment.

5. Learned Advocate Mr. Harekrishna Mishra appearing for the petitioner has urged as follows :-

i) Although the period of externment is suffered by the petitioner, the order is required to be challenged since it was an abuse of process of law. The authorities are exercising the powers of externment arbitrarily.

ii) All the offences were registered with Panchavati Police Station, which squarely falls within the jurisdiction of Deputy Commissioner of Police, Zone – 1, Nashik City, which would mean that the activities of the petitioner is confined only to the limits of Panchavati Police Station. However, the petitioner has been externed from excessive area. The order suffers from non application of mind.

iii) The Appellate Authority has mechanically rejected the Appeal and confirmed the order of externment.

iv) The externing authority has taken into consideration old and stale cases for externing the petitioner.

v) The order of externment is violative of principle of double jeopardy. While issuing the impugned order, the respondents have taken into account even those offences for which the petitioner had been externed earlier. Out of eight FIR's are on the basis of which the impugned order has been issued by relying upon five FIR's, Deputy Commissioner of Police, Zone – 1 had passed two externment orders i.e. externment order dated 8th December, 2017 which was modified by the Appellate authority by its order dated 22nd May, 2018 and order of externment dated 6th November, 2019 which was also modified by the Appellate Authority vide order dated 12th March, 2020.

vi) The petitioner cannot be subjected to externment repeatedly by relying upon the same material. The order is arbitrary. It is violative of Article – 19 of the Constitution of India.

vii) The show cause notices dated 24th February, 2021 and

9th April, 2021 are silent about the earlier two externment orders. The externment order was passed on extraneous material.

viii) The first Five FIR's are the subject matter of previous two externment orders are out of rest three offences mentioned at Serial Nos. 6, 7 & 8, C.R. No.661 of 2020 registered with Panchavati Police Station is the offence which would fall within Chapter 16 and 17 of the Code.

6. The learned Advocate for Petitioner has relied upon following decisions :-

i) *Iqbal Hussain Abid Hussain Qureshi V/s. The State of Maharashtra & Ors.*¹

ii) The decision of this Court, in the case of *Subhash Ganu Bhoir V/s. K.P. Raghuwanshi and Ors.* decided on 2nd April, 1986 in Criminal Writ Petition 173 of 1986.

iii) *Mrunal Bhalchandra Ghodke V/s. The State of Maharashtra and Ors.*²

iv) *Jeetendra Ashok Bhosale V/s. Divisional Commissioner Council Hall and Others.*³

v) The decision of this Court, in the case of *Mohseen Mohammed Sallem Nadaf V/s. D.C.P. Zone Solapur City, Solapur and Ors.* decided on 6th July, 2021 in Criminal Writ Petition 2093 of 2021.

1 1998 SCC OnLine Bom 727

2 2018 SCC OnLine Bom 560

3 2021 SCC OnLine Bom 788

7. Learned A.P.P. submitted that, the petition has become infructuous. The period of externment has already lapsed. The petitioner is involved in several offences. The petitioner is repeatedly committing offences. The subjective satisfaction of the externing authority is reflected in the order of externment. The principle of double jeopardy is not applicable in the present case. There was sufficient material before the externing authority to extern the petitioner. The externment was for a period of one year. The appellate authority has confirmed the order of externment. The order is not excessive.

8. Although the petitioner has suffered the order of externment and the period of externment has lapsed, there is no impediment in challenging the impugned order of externment. In the case of *Iqbal Hussain Abid Hussain Qureshi V/s. The State of Maharashtra & Ors.* (supra) this Court has entertained the petition challenging the order of externment considering the fact that the period of externment had expired during the pendency of petition and if the order is allowed to stand, it is likely to affect the petitioner therein in other proceedings. The order of externment was set aside on merits. In the case of *Mohseen Mohammed Sallem Nadaf V/s. D.C.P. Zone Solapur City, Solapur and Ors.* (supra) this Court has

dealt with the order externment after the period of externment had expired. The Court noted the merits of the case and set aside the order of externment. It was observed that, undoubtedly the period of externment has come to an end but having arrived at the conclusion that the order of externment is bad in law, the Court would not be justified in not declaring it void and non-est for the only the reason that the period of externment is over.

9. On perusal of the documents on record it is evident that the petitioner has been externed vide order dated 4th May, 2021 by relying upon seven cases and two in camera statements. The appellate authority has rejected the appeal preferred by the petitioner and thereby confirmed the order of externment. The petitioner has placed on record the order of externment dated 8th December, 2017 issued by Deputy Commissioner of Police, Zone – 1, Nashik City, wherein the petitioner was externed from the area mentioned therein. The said order refers to C.R.No.308 of 2015 registered with Panchavati Police Station. The C.R.No.308 of 2015 is also subject matter of impugned order dated 415 of 2021. The order of externment dated 6th November, 2019 was also issued by Deputy Commissioner of Police Zone – 1 Nashik City under Section 56(1)(a) & (b) of the Maharashtra Police Act. The said order refers

to C.R.No. 308 of 2015, C.R. No.438 of 2017 registered with Panchavati Police Station and C.R. No.153 of 2018 registered with Panchavati Police Station. All these cases are considered in impugned externment order.

10. Thus, it is apparent that, while issuing the impugned order of externment, the externing authority has relied upon the cases which were also subject matter of previous orders of externment. It is pertinent to note that, all the orders were issued by the same authority. The powers of externment are exercised in most arbitrary manner. The externee cannot be externed repeatedly by relying upon the same material. The previous order were modified by the appellate authority. The externee cannot be subjected to rigors of externment by relying upon the same cases. It is violative of Article 19 of the Constitution of India. The freedom of persons is restricted by exercising the powers of externment in most causal manner.

11. In the case of *Subhash Ganu Bhoir V/s. K.P. Raghuwanshi and Ors.* (supra) this Court had set aside the order of externment on the ground that, the impugned order was based on some of the grounds which were the subject matter of earlier externment proceedings which could not have been made basis of the present

externment proceedings. It is also pertinent to note that, reference of the cases which were referred in the previous order of externment would also indicate that the externing authority is relying on the stale cases to initiate externment proceedings. The impugned order was issued mechanically by taking recourse to old and stale cases which were the subject matter of earlier proceedings, no order could have been passed under Section 56(a) (b) of the Maharashtra Police Act. In the case of *Jeetendra Ashok Bhosale V/s. Divisional Commissioner Council Hall and Others* (supra) this Court has observed that the externing authority cannot take stale cases for initiating externment proceedings. The externing authority must apply its mind to the fact of live link between the registration of old cases and initiation of externment proceedings. In the case of *Mrunal Bhalchandra Ghodke V/s. The State of Maharashtra and Ors.* (supra) this Court had set aside the order of externment on account of non application of mind. The order of externment was based on the same material, which was considered for the previous proposal to extern the extrnee. The Petitioner therein could not have been externed on the basis of material, which is already taken into consideration on the earlier occasion and found to be insufficient.

12. The impugned order reflects complete non application of mind and casual approach of the authorities initiating externment proceedings. The order deserves to be quashed and set aside. Hence, I pass the following order :-

ORDER

- i. Writ Petition No.6391 of 2021 is allowed and disposed off.
- ii. Order dated 04.05.2021 passed by Deputy Commissioner of Police Zone-1, Nashik City, District Nashik issued under Section 56(1)(a)(b) of Maharashtra Police Act and order dated 27.08.2021 passed by Divisional Commissioner, Nashik Division, Nashik in Externment Appeal No. 56 of 2021 are quashed and set aside.

(PRAKASH D. NAIK, J.)