AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 395 of 2022

- Taukeeir Ahmed Khan

---- Appellant

Versus

1. State Of Chhattisgarh Through Its Secretary Department Of Home Affairs, Mahanadi Bhavan, Atal Nagar, Nava Raipur, Distt. Raipur, CG

2. District Magistrate Korba Rampur Road, Rampur, Korba, District Korba Chhattisgarh.

3. Sub-Divisional Magistrate Katghora Tehsil Premises Katghora Korba, District Korba Chhattisgarh.

4. State Of Chhattisgarh Through Station House Officer Police Station Balco Nagar District- Korba, Chhattisgarh

---- Respondent

(Cause-title taken from Case Information System)

For Appellant : Shri R.S. Marhas with Shri Dhiraj Kumar Wankhede, Advocates
For Respondents : Ms. Meena Shastri, Additional Advocate General.

Date of Hearing : 26/08/2022 & 29/08/2022
Date of Judgment : 16/09/2022

Hon'ble Shri Arup Kumar Goswami, CJ &
Hon'ble Shri Deepak Kumar Tiwari, J

C A V JUDGMENT

Per Deepak Kumar Tiwari, J.

The Appellant has preferred this Appeal challenging the order dated 2.5.2022 passed by the learned Single Judge in WPCR No.78/2022, whereby

the learned Single Judge has repelled/rejected the challenge made by the appellant to the externment order dated 1.9.2021 passed by the District Magistrate, Korba under Section 5(b) of the Chhattisgarh Rajya Suraksha Adhiniyam, 1990 (Henceforth 'the Act').

2. The Appellant had preferred a Writ Petition against the order dated 1.9.2021 passed by the District Magistrate, Korba restraining him to enter Korba city and other border districts for a period of one year, which was affirmed in Appeal by the State Government on 6.12.2021. The learned Single Judge has dismissed the writ petition by observing that 'If the petitioner has to his credit the number of enlisted cases, then balancing the right of the public at large of Society to have free fearless atmosphere would be a prime factor which cannot be ignored as against the rights of the petitioner. Though it has been stated that the petitioner was acquitted of the cases, but the inception of cases against the petitioner would demonstrate the gravity of charges against him and would lead to show the activity mutated from one to other. The public at large cannot be expected to face real life drama at unexpected places time and again. The nature of acquittals in criminal cases also speaks a loud. The state has passed the order of externment considering the conduct of petitioner with an idea of reforming the society. It is obvious that serving certain problem requires multi-prolonged approach to balance the twin need i.e., the right of public at large and that of petitioner. Externment orders are passed to control anti-social elements under the State Laws, which provide for specific orders for their inter-state as well as intra-state for a certain period of time. The power for such removal has been conferred to

administrative authorities, specially to District Magistrates and City Commissioners whereby liberty of an individual is put to reasonable bounds for larger good. Therefore, considering the nature of past conduct coupled with fresh report made against the petitioner, which may be a turbulence alert, the order passed by the District Magistrate and the order passed by the State for the safety of general public at large would hold the sway over the individual right of the petitioner as article 21 would be subject to the law of land.'

3. The Appellant had challenged the impugned order passed by the District Magistrate, Korba on 1.9.2021 in Criminal Case No.02/2020 in respect of proceedings under Section 5(b) of the Act. The Appellant thereafter filed an Appeal under Section 9 of the Act before the State Government, which was rejected by the State Government on 6.12.2021. The Appellant had challenged both the orders on the ground that sufficient material under Section 5(b) of the Act was not available before the learned District Magistrate. The cases mentioned in the report of Superintendent of Police, Korba on the basis of which impugned order was passed, were old and stale cases. However, the learned Single Judge has failed to appreciate the aforesaid grounds while dismissing the writ petition.

4. Learned counsel for the Appellant would submit that the order dated 2.5.2022 passed by the writ Court is bad in law inasmuch as the same has been passed without considering the facts, relevant documents and grounds raised by the appellant. The impugned order has been passed without considering the provisions of Section 8 and Section 5(b) of the Act. The externment order

was passed in complete violation of Section 8 of the Act, as no opportunity was granted to the appellant to defend his case and to submit all the certified copies of acquittal orders and other relevant documents before the District Magistrate, Korba. The Appellant was completely unaware of the witnesses who had deposed against him and opportunity to cross-examine the witnesses was not afforded to the appellant. The Superintendent of Police, Korba had only submitted a letter dated 27.5.2020 along with list of 7 criminal cases registered against the appellant. It was submitted that the respondents did not place any material or document and the judgments passed by the Criminal Court before the District Magistrate, Korba. The District Magistrate passed the externment order only on the basis of list of cases registered against the appellant. It is pertinent to mention here that 6 cases registered under the preventive action mentioned in the list were too old, as the same were registered 10-15 years ago.

5. Learned counsel would further submit that neither the Superintendent of Police, Korba and other officers of the Korba Police Administration had provided sufficient material to the District Magistrate, Korba nor the appellant was afforded any opportunity to place the certified copies of the acquittal orders passed in 6 criminal cases and the anticipatory bail order passed in Crime No.223/2020. The learned District Magistrate passed the externment order in the absence of sufficient material, which is against the provisions of Sections 5(b) and 8 of the Act, and the learned Single Judge has also failed to consider the aforesaid facts. The District Magistrate considered the report submitted by the SHO, Police Station Balco Nagar before the SP, Korba on

5.8.2021 concerning the Whatsapp voice recording submitted by one Krishna Kumar, Ex. Senior Manager at Feedback Power Company alleging that they received the said voice recording on 12.6.2021 wherein the appellant was extending threat to said Krishna Kumar. It was submitted that no complaint has been filed by any person in any police station concerning the aforesaid threat.

6. Learned counsel for the appellant would further submit that though the externment order was passed not only in respect of Korba district but also in respect of bordering districts, however, no material was available on record to justify it. He would place reliance on the judgments in the matters of **Deepak Laxman Dongre Vs. State of Maharashtra**[1], **Sandhi Mamad Kala Vs. State**[2], **Ayub Abdul Sattar Shaikh Vs. Dy. Commissioner of Police, Zone-VI, Mumbai and Another**[3], **State of NCT of Delhi and Another Vs. Sanjeev alias Bittoo**[4], **Rahmat Khan alias Rammu Bismillah Vs. Deputy Commissioner of Police**[5], **Lt. Governor, NCT And Others Vs. Ved Prakash alias Vedu**[6] and **Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra**[7]. He would finally submit that the impugned order was passed in a mechanical and arbitrary manner, without any just or sufficient cause. So learned counsel prays to allow the Appeal and set aside the impugned order as well as the orders passed by the appellate Court.

1 AIRONLINE 2022 SC 70
2 1973 0 GLR 384
3 2013 SCC OnLine Bom 1179
4 (2005) 5 SCC 181
5 (2021) 8 SCC 362
6 (2006) 5 SCC 228
7 (1973) 1 SCC 372

7. On the other hand, learned counsel for the Respondents contended that while passing the order of externment, the competent authority has recorded the subjective satisfaction regarding the grounds mentioned in Section 5(b) of the Act. The State and the writ Court have already examined the grounds of challenge to the impugned order of externment and the same have been rejected. She would further submit that the grounds stipulated under Section 10 of the Act are limited and the source of information or communication received by the State is not required to be disclosed. She submitted that due procedure has been followed under the Act in passing the order of externment. Learned State Counsel would place reliance on the judgment in the matter of **Gazi Saduddin Vs. State of Maharashtra and Another**[8] to submit that no interference is called for with the impugned order passed by the learned Single Judge as also the appellate orders passed under Section 9 of the Act by the State.

8. We have heard learned counsel for the parties at length and perused the record.

9. Though the period of externment is over, however, considering the fact that the issue affects the personal liberty and fundamental rights of a citizen, this Court is of the view that the matter needs to be examined to see whether due process of law has been followed in the present matter or not. The relevant legal provisions of the Act under which the order of externment has been passed and which also prescribes the proceedings for recording of satisfaction on reasonable grounds to pass such an order are reproduced

8 (2003) 7 SCC 330

hereunder :-

"**S. 5. Removal of persons about to commit offence. :** Whenever it appears to the District Magistrate-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be 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 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; or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant;

the District Magistrate may, by an order in writing duly served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-

(a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or

(b) to remove himself outside the district or any part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route within such time as the District Magistrate may specify and not to enter or return to the said district or part thereof or such area and such contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself.

S. 7. Period of operation of orders under Section 4, 5 or 6. - A direction made under Section 4, 5 or 6 not to enter any district or part thereof or such area and any district or districts or any part thereof, contiguous thereto, as the case may be, shall be for such period as may be specified therein and shall in no case exceed a period of one year from the date of which it was made.

S. 8. Hearing to be given before order under Section 3, 4, 5 or 6 is passed. - (1) *Before an order* under Section 3, 4, 5 or 6 is passed against any person, *the District Magistrate shall inform the person in writing of the general nature of the material allegation*s against him and give him a r*easonable opportunity for tendering an explanation* regarding them.

(2) If such person makes an application for the examination of any witness produced by him, the District Magistrate shall grant such application and examine such witnesses unless for reason to be recorded in writing, if District Magistrate is of the opinion that such application is made for the purpose of vexation or delay.

(3) Any written statement put in by such person shall be filed with the record of the case and such person shall be entitled to appear before the District Magistrate by any legal practitioner for the purpose of tendering his explanation and examining the witnesses produced by him.

(4) The District Magistrate, proceeding under sub-section (1), may for the purpose of securing the attendance of any person against whom any order is proposed to be made under Section 3, 4, 5 or 6 requires such person to appear before him and to execute a security bond with or without sureties for such attendance during the inquiry.

(5) If the person fails to execute the security bond as required or fails to appeal before the District Magistrate during the inquiry, it shall be lawful for the District Magistrate to proceed with the enquiry *ex parte* and thereupon such order, as was proposed to be passed against him, may be passed.

S. **10. Finality of orders passed for in certain cases.** - Any order passed under Section 3, 4, 5 or 6 shall not be called in question in any Court except on the grounds-

(i) that the District Magistrate had not followed the procedure laid down in sub-section (1) of Section 8; or
(ii) that there was no material before the District Magistrate upon which he could have based his order; or

(iii) that the District Magistrate was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made under Section 5.

S. 19. Sources of information not to be disclosed. - Nothing in this Act shall be deemed to require the State Government or the officers specially empowered by it under Section 13 or the District Magistrate or the Additional District Magistrate or Sub-Divisional Magistrate empowered under Section 18 as the case may be to disclose to the person against whom an order is made under Sections 3, 4, 5, 6 and 13 of this Act or to any Court of law the source of it or his information or any fact, the communication of which might, in the opinion of the State Government or the officer empowered under Section 13 of the District Magistrate or the Additional District Magistrate or Sub-Divisional Magistrate empowered under Section 18 as the case may be lead to the disclosure of the identity or name of any informant."

10. Before delving upon the issue, the observations made on the subject in legal precedents are significant which are being mentioned hereunder:

11. In **Rahmat Khan v. State**[9], while quashing the externment order ,the following was observed :

"**25.** The scope and ambit of Sections 56 to 59 of the Maharashtra Police Act, 1954 was considered in *Pandharinath Shridhar Rangnekar* v. *State* [*Pandharinath Shridhar Rangnekar* v. *State*, (1973) 1 SCC 372 : 1973 SCC (Cri) 341] cited by Mr Patil, appearing for the State, where this Court held : (SCC pp. 376-78, paras 8-10 & 15-16) :

"8..... the officer shall inform that person in writing 'of the general nature of the material allegations against him' and give him a reasonable opportunity of tendering an explanation regarding those allegations. The proposed externee is entitled to lead evidence unless the authority takes the view that the application for examination of witnesses is made for the purpose of vexation or delay. Section 59 also confers

on the person concerned a right to file a written statement and to appear through an advocate or attorney.

9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (*a*) or (*b*) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee of the general nature of the material allegations against him'. That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.

10. It is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in Gurbachan Singh v. State of Bombay [Gurbachan Singh v. State of Bombay, 1952 SCR 737 : AIR 1952 SC 221 : 1952 Cri LJ 1147] had upheld the validity of Section 27(1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the

challenge to the constitutionality of Section 56 was repelled in Bhagubhai Dullabhabhai Bhandari v. District Magistrate, Thana [Bhagubhai Dullabhabhai Bhandari v. District Magistrate, Thana, AIR 1956 SC 585 : 1956 Cri LJ 1126] . We will only add that care must be taken to ensure that the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee.

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15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subserve its real purpose. How long, within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is able to collect in the externment proceedings. There are cases and cases and therefore no general formulation can be made that the order of externment must always be restricted to the area to which the illegal activities of the externee extend. A larger area may conceivably have to be comprised within the externment order so as to isolate the externee from his moorings.

16.An excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. The decision of the Bombay High Court in Balu Shivling Dombe v. *Divisional Magistrate, Pandharpur* [*Balu Shivling Dombe* v. *Divisional Magistrate, Pandharpur*, 1968 SCC OnLine Bom 20] *, is an instance in point where an externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case*. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as districts of Sholapur, Satara and Poona. These areas are far widely removed from the locality in which the externee had committed but two supposedly illegal acts. The exercise of the power was therefore arbitrary and excessive, the order having been passed without reference to the purpose of the externment."

(emphasis supplied)

31. An externment order may sometimes be necessary for maintenance of law and order. However the drastic action of externment should only be taken in exceptional cases, to maintain law and order in a locality and/or prevent breach of public tranquility and peace. In this case, it is patently clear that the impugned externment order was an outcome of the complaints lodged by the appellant against government officials, some Madrasas and persons connected with such Madrasas who later lodged FIRs against the appellant. The FIRs are clearly vindictive, retaliatory and aimed to teach a lesson to the appellant and stifle his voice."

12. In **Lt. Governor, NCT v. Ved Prakash**[10] it was observed thus **:**

"**18.** The law operating in the field is no longer res integra which may hereinafter be noticed:

(*i*) In a proceeding under the Act, all statutory and constitutional requirements must be fulfilled.

(*ii*) An externment proceeding having regard to the purport and object thereof, cannot be equated with a preventive detention matter.

(*iii*) Before an order of externment is passed, the proceedee is entitled to an opportunity of hearing.

(*iv*) The test of procedural safeguards contained in the Act must be scrupulously complied with.

(*v*) The satisfaction of the authority must be based on objective criteria.

(*vi*) A proceeding under Section 47 of the Delhi Police Act stands on a different footing than the ordinary proceeding in the sense that whereas in the latter the details of the evidence are required to be disclosed and, thus, giving an opportunity to the proceedee to deal with them, in the former, general allegations would serve the purpose.

22. The High Court and this Court would undoubtedly jealously guard the fundamental rights of a citizen. While exercising the jurisdiction rested in them invariably, the courts would make all attempts to uphold the human right of the proceedee. The

10 (2006) 5 SCC 228

> fundamental right under Article 21 of the Constitution undoubtedly must be safeguarded. But while interpreting the provisions of a statute like the present one and in view of the precedents operating in the field, the court may examine the records itself so as to satisfy its conscience not only for the purpose that the procedural safeguards available to the proceedee have been provided but also for the purpose that the witnesses have disclosed their apprehension about deposing in court truthfully and fearlessly because of the activities of the proceedee. Once such a satisfaction is arrived at, the superior court will normally not interfere with an order of externment. The court, in any event, would not direct the authorities to either disclose the names of the witnesses or the number of cases where such witnesses were examined for the simple reason that they may lead to causing of further harm to them. In a given case, the number of prosecution witnesses may not be many and the proceedee as an accused in the said case is expected to know who were the witnesses who had been examined on behalf of the prosecution and, thus, the purpose of maintaining the secrecy as regards identity of such persons may be defeated. The court must remind itself that the law is not mere logic but is required to be applied on the basis of its experience.
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> **26.** Although it is not possible for us to lay down the law in precise terms as the facts of each case are to be considered on their own merit, we have endeavoured to lay down the broad propositions of law."

13. In **State of NCT of Delhi v. Sanjeev**[11], it was observed that it is not the sufficiency of material but the existence of material which is the sine qua non. The satisfaction of the authority can be interfered with if it is found to be perverse. So, for examining such issue the propositions which were observed in paras 15 to 17 and 25 read thus :

> **15 ".....**It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the

11 (2005) 5 SCC 181

exercise of the power is manifestly arbitrary (see *State of U.P.* v. *Renusagar Power Co.* [(1988) 4 SCC 59 : AIR 1988 SC 1737]). **......"**

16 "..... One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in *Council of Civil Service Unions* v. *Minister for the Civil Service* [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] (commonly known as *CCSU case*). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See *CIT* v. *Mahindra and Mahindra Ltd.* [(1983) 4 SCC 392 : 1983 SCC (Tax) 336 : AIR 1984 SC 1182])....."

17. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

25. As observed in *Gazi Saduddin case* [(2003) 7 SCC 330 : 2003 SCC (Cri) 1637] satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority.

14. In **Deepak v/s State of Maharashtra and Others**[12] it was observed that an order of externment is not an ordinary measure and it must be resorted to sparingly and in extraordinary circumstances. It was the duty of the

12 2022 SCC OnLine SC 99

Constitutional Court to test the said order within the parameters which are well-settled by the Supreme Court. The Court can always consider whether there existed any material on the basis of which a subjective satisfaction could have been recorded. The restriction imposed by passing an order of externment must stand the test of reasonableness. Regarding scrutiny of the material on record, the observations made in paras 10 & 13 are significant, which are as under :

> "**10**. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause (b), there must be objective material on the basis of which the competent authority must record subjective satisfaction that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII are offences relating to the property. In a given case, **even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that *by itself is not sufficient*** to pass an order of externment under clause (b) of sub-

> section (1) of Section 56. Moreover, when clause (b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b).
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> **13.** Considering the nature of the power under Section 56, the competent authority **is not expected to write a judgment containing elaborate reason**s. However, the competent authority **must record its subjective satisfaction of the existence of one of the grounds in sub-section (1) of Section 56 on the basis of objective material placed before it.** Though the competent authority is not required to record reasons on par with a judicial order, when challenged, *the competent authority must be in a position to show the application of mind*. The Court while testing the order of externment cannot go into the question of sufficiency of material based on which the subjective satisfaction has been recorded. However, t*he Court can always consider whether there existed any material on the basis of which a subjective satisfaction could have been recorded*. The Court can interfere when either there is no material or the relevant material has not been considered. The Court cannot interfere because there is a possibility of another view being taken. As in the case of any other administrative order, the judicial review is permissible on the grounds of *mala fide*, unreasonableness or arbitrariness.

15. From the aforesaid propositions of law, it is evident that the order of externment is not an ordinary measure and it must be resorted to sparingly and in extraordinary circumstance. By passing an order of externment fundamental right of a person of free movement throughout the territory of India is curtailed and, therefore, it must withstand the test of reasonableness. The order of externment should be sparingly used.

16. Reverting back to the facts of the present case, respondent No. 2 vide order dated 01/09/2021 exercised the powers under Section 5(b) of the Act and directed the appellant to remove himself outside the limits of District Korba and adjoining districts within 24 hours and he was externed from District Korba and adjoining districts for a period of one year from the service of the said order on him. In the impugned order of externment, the respondent No. 2 has, before recording satisfaction, relied upon 7 offences registered under the Indian Penal Code against the appellant & 6 preventive actions which were taken against him, the details of which were reported by the Superintendent of Police in his report dated 25.05.2020, which are reproduced hereunder:

Offences registered under the Indian Penal Code

S. No.	Name of Complainant	Crime No.	Section	Status
1.	Radheshyam Yadav	266/2007	452, 294, 323, 506 Pt. II,147 of I.P.C.	Charge sheet filed in the Court
2.	Bharat Singh Thakur	341/2007	147, 149, 186, 353, 332 of IPC	Charge sheet filed in the Court
3.	Santosh Sahu	339/2008	293, 323, 506, 34 of IPC	Charge sheet filed in the Court
4.	Hemant Kumar Bhatia	319/2010	294, 506, 147, 148, 427 of I.P.C.	Charge sheet filed in the Court
5.	Shambhusharan Prasad	114/2011	452, 294, 323, 506, 427, 34 of I.P.C	Charge sheet filed in the Court
6.	Manish Kumar Singh	248/2011	294, 506, 323, 34 of I.P.C.	Charge sheet filed in the Court

7.	Lakhan Lal Patel, Inspector, S.H.O., P.S.BALCONAGAR	223/2020	506, 384, 385 of I.P.C.	Under Investigation (Petitioner was arrested & sent to judicial custody)

The cases registered under preventive actions (Prohibitory orders)

S. No.	Istgasha Number	Date of Incident.	Section
1	7/2009	22/06/2007	107,116(3) of Cr.P.C.
2	43/2009	13/03/2009	107,116(3) of Cr.P.C.
3	52/2010	25/01/2010	107,116(3) of Cr.P.C.
4	59/2018	29/09/2018	110 of Cr.P.C.
5	03/2012	15/10/2012	110 of Cr.P.C
6	01/2020	25/05/2020	110 of Cr.P.C

17. From the aforesaid chart, it is vivid that there was no offences under the I.P.C. mentioned or reported from 2012 to 2019 by the S.P., and only one offence was registered by the S.H.O himself in the year 2020 which was pending investigation. It is also significant that preventive action which was last drawn on 25/05/2020, and S. 116(6) of Cr.P.C. mandates that if the inquiry is not completed within a period of six months from the date of its commencement, the proceeding shall stand terminated, unless, for special reasons to be recorded in writing by the Magistrate. In the facts of the case, the cases which were taken into consideration for passing the order, were old and stale, and there is no live link between the said offences and as the order of externment was passed in the year 2021, it demonstrates that the District Magistrate had relied upon old and stale cases.

18. The Appellant has taken a specific stand that except the Crime No. 223/2020, which is pending consideration in Court, in all other cases which have been reported, he had already been acquitted. Learned counsel for the appellant would further submit that even in crime number 223/2020, the appellant was enlarged on anticipatory bail from the Sessions Court. So, the proper facts were not brought to the notice of the Competent Authority, and the copies of the judgment of acquittals were also filed by the petitioner/appellant, which is not rebutted by the learned State counsel. It is settled law that order of externment is a serious issue, in which no casual approach saves such proceedings. In the present matter, in the report dated 25.05.2020 submitted by the Superintendent of Police, true facts about the acquittals were not placed. In the complaint made by Bharat Singh Thakur, the date of incident was 16.11.2007, and in Cr. Case No. 22/2010, the appellant and 6 others were acquitted on 17.05.2011 by J.M.F.C., Korba. In Cr.C. No. 415/2010, which had been registered on the complaint of Hemant Kumar Bhatia, judgment of acquittal was passed on 01.02.2014. On a complaint made by Manish Kumar Singh, Cr. Case No. 252/2011 was registered wherein a judgment of acquittal was passed on 05.03.2012. Cr. C. No. 185/2011 had arisen out of a complaint made by Shambhu Sharan Prasad, wherein judgment of acquittal was passed on 05.03.2012. From the aforesaid facts, it is clear that in the impugned order, the District Magistrate had not based

its findings on true facts, and wrongly mentioned that charge sheets have been filed on such cases though on the date of consideration for extenment proceedings, the appellant had already been acquitted. So, the satisfaction which was recorded by the District Magistrate based on such incorrect and erroneous facts cannot be said to be proper. The report submitted by the Superintendent of Police without collecting the facts of acquittal of the appellant, in a very casual manner, was made basis for initiating the externement proceeding and even in the said proceeding, the District Magistrate had not called for any report about the result or status of such cases before passing the order for externment.

19. The appellant has filed the copies of judgment of acquittals. Upon perusing the said judgments, it is apparent that complainant Bharat Singh Thakur, Hemant Kumar Bhatia, Shambhu Sharan Prasad, Manish Kumar Singh were all examined during trial. So, the opinion recorded in the order that the witnesses are not willing to come forward to give evidence against the appellant is also not found to be correct from the record. In the impugned order, the District Magistrate has merely mentioned that the witnesses are not coming forward because of their apprehension. No reasons were assigned for arriving such conclusion. Even the nature of offence alleged against the appellant and their outcome have not been taken into consideration.

20. Though the show cause notice was issued on 02.06.2020, but the District Magistrate vide para 5 of the impugned order of externment, has also taken into consideration the letter of Superintendent of Police dated 31.08.2021, in which it was mentioned that a complaint was made by Krishna Swamy, Senior Manager of Feedback Power Company to Station House Officer, Balco Nagar, Korba on 12/06/2021 stating that he has received threat on his official Mobile Phone for giving petty contract work in the company and creating pressure for illegal gain, which is affecting the industrial work in the District Korba. Learned counsel for the appellant would submit that no offence has been registered on any such complaint and it was also not part of the show cause notice issued to the appellant. He has also referred the judgment in the matter of **Shailender Kaur v/s Lt. Governor & others** {2001 SCC OnLine Del. 464} to submit that principles of natural justice must be complied before passing the externment order against any individual. In the said matter, the externment order was quashed as the cases were not part of the notice and the relevant part is para-21 which reads thus :

> "**21**.....Section 50 of the Act has mandated the Commissioner of Police to give notice in writing and also inform the person in question of the general nature and the material allegations against him. The acts, movements and criminal cases which were proposed to be taken into consideration before passing orders under Section 47 were required to be mentioned in the notice served on the

> petitioner against whom the order of externment was proposed. It was necessary to give reasonable opportunity hearing and tendering her explanation to the show cause notice. It has not been stated before us that after the service of the show cause notice dated 2.4.1997 the Addl. DCP (East Distt.) had given further notice to the petitioner or during the hearing had made it known to the petitioner the other cases in which she was involved whether under the Punjab Excise Act or under the IPC and they were also the material allegations which could be used against her in the proceedings. Admittedly, it has not been done in this case. The order of externment of Addl. DCP (East Distt.) and the order passed in appeal by the Lt. Governor of Delhi, therefore, are violative of Section 50 of the Act. The orders are vitiated and cannot be sustained."

21. Section 8 of the Act mandates that the District Magistrate shall inform that person in writing 'of the general nature of the material allegations against him' and give him a reasonable opportunity of tendering an explanation regarding those allegations. Though action was initiated on 02.06.2020, and the impugned order was passed on 01.09.2021 after more than one year, it can safely be inferred that the impugned order of externment was passed without due notice. The object of the Act is to provide extraordinary measure to meet the instant or emergent situation. An externment order may sometimes be necessary for maintenance of law and order, but when the order itself was passed belatedly, it shows that there was no such circumstances to exercise the

powers of extraordinary measure. So, from the facts which were taken into consideration when it was not part of the show cause notice, the basic rule of natural justice as engrafted under Section 8 of the Act is violated, as the appellant was deprived of sufficient opportunity to defend himself. Therefore, we are of the view that the impugned order is bad in law on account of violation of the procedure prescribed in Section 8 of the Act.

22. From the foregoing analysis and on close scrutiny of the material available on record, the following points emerge:-

(i) it can be safely inferred that there was no objective material for recording subjective satisfaction to pass an order of externment against the petitioner/appellant.

(ii) it is well settled principle of law that old and stale cases cannot be taken into consideration while passing the order under Section 5 of the Act.

(iii) the State has failed to point out the necessity of passing an order of externment requiring curtailment of liberty of the Appellant as enshrined under Article 19 of the Constitution of India.

(iv) principles of natural justice must be complied with before passing the externment order against any individual.

(v) even when the externment order was passed in respect of bordering district/s, the grounds must be disclosed to the proposed externee, both in show cause notice as also in the order of externment for justifying it. This proposition was laid down in the matter of **Sandhi Mamad Kala**

Vs. State {1973 0 GLR 384} and the power is not to be exercised mechanically or blindly.

23. In the result, the impugned order of externment dated 01.09.2021, the order passed in Appeal under Section 9 of the Act by the State on 06.12.2021, as well as impugned order passed in WPCR No.78/2022 on 02.05.2022 by the learned Single Judge are hereby quashed and set aside.

24. The Appeal is accordingly allowed.

Sd/-
(**Arup Kumar Goswami**)
Chief Justice

Sd/-
(**Deepak Kumar Tiwari**)
Judge

Barve