



IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH

DATED THIS THE 8<sup>TH</sup> DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 104804 OF 2023 (GM-POLICE)

**BETWEEN:**

MAHANTAYYA

PETITIONER

(BY SRI. SHRIHARSH A NEELOPANT, ADVOCATE)

VISHAL  
NINGAPPA  
PATTIHAL

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VISHAL NINGAPPA  
PATTIHAL

Date: 2023.08.18  
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**AND:**

1. THE STATE OF KARNATAKA,  
R/BY SECRETARY,  
DEPARTMENT OF HOME,  
VIDHANA SOUDHA,  
BENGALURU-560001.
2. THE ASSISTANT COMMISSIONER  
CUM SUB-DIVISIONAL MAGISTRATE,  
BAILHONGAL SUB-DIVISION,  
BAILHONGAL-591102, TQ. BAILHONGAL,  
DIST. BELAGAVI.



3. THE DEPUTY SUPERINTENDENT OF POLICE,  
GOKAK SUB-DIVISION,  
GOKAK -591218, TQ. GOKAK,  
DIST. BELAGAVI.
  
4. THE CIRCLE INSPECTOR,  
GOKAK CIRCLE, GOKAK-591218,  
TQ. GOKAK, DIST. BELAGAVI.
  
5. THE POLICE SUB INSPECTOR,  
MUDALAGI POLICE STATION,  
MUDALAGI-591312,  
TQ. MUDALAGI,  
DIST. BELAGAVI.

... RESPONDENTS

(BY SRI. V S KALASURMATH, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 28.07.2023, PASSED IN CASE BEARING NO.MAG/CR07/2023-24 PASSED BY THE 2<sup>ND</sup> RESPONDENT UNDER SECTION 55 AND 56 OF THE KARNATAKA POLICE ACT 1963 AGAINST THE PETITIONER, AS PER ANNEXURE-A IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

1. Learned HCGP is directed to accept notice for respondents.

2. The petitioner is before this Court calling in question the order dated 28.07.2023 passed by the 2<sup>nd</sup> respondent/Assessment Commissioner cum-Sub-Divisional Magistrate, Bailhongal externing the petitioner from Bailhongal Sub-Division to Bagalkot for a period of three months.

3. Heard Sri Shriharsh A.Neelopant, learned counsel appearing for the petitioner and Sri V.S. Kalasurmatah, learned High Court Government Pleader appearing for the respondents.

4. Facts, in brief, germane are as follows:

The petitioner is a resident of Bailhongal. The petitioner gets embroiled in 3 crimes, all for offences punishable under Section 78(3) of the Karnataka Police Act, 1963 ('Act' for short). The first of the crime was



registered in the year 2015; the next in 2021 and the third in the year 2022, all for the aforesaid offence. The offence under Section 78(3) of the Act is admittedly non-cognizable. It transpires that those cases which were in Crime Nos.41 of 2015, 127 of 2021 and 78 of 2022 have all been closed on imposition of fines. Notwithstanding their closure, a report appears to have been generated against the petitioner that he is involved in the aforesaid 3 crimes and on that score he has to be externed from Bailhongaal to any other place. The said report against the petitioner is communicated to the petitioner to show cause as to why an order of externment should not be passed against him. The petitioner appears before the Assistant Commissioner and puts up his defence. Notwithstanding the said defence, the order of externment comes to be passed by the Assistant Commissioner on 28.07.2023. It is this order that is called in question in the subject petition.



5. The learned counsel appearing for the petitioner would contend with vehemence that the fundamental right of the petitioner is taken away for offences which are non-cognizable and have all been closed by imposition of fines. He would contend that in gross misuse of power the order of externment is passed.

6. On the other hand, the learned High Court Government Pleader would seek to defend the action contending that the petitioner had become dangerous to the Society or the surrounding places and therefore, action had to be taken. He would submit that all the necessary procedures in law are followed prior to the order of externment.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. Before embarking upon consideration of the case on its merits, I deem it appropriate to notice the legal



frame work under which an order of externment could be passed against any person. Chapter-II of the Act deals with dispersal of gangs and bodies of persons convicted of certain offences. Section 54 deals with dispersal of gangs and bodies of persons which is applicable to the case at hand. What is germane to be noticed is Sections 55 to 60 and they read as follows:-

***"55. Removal of persons about to commit offences.—Whenever it shall appear in the City of Bangalore and other areas for which a Commissioner has been appointed under section 7 to the Commissioner, and in other area or areas to which the Government may, by notification in the official Gazette, extend the provision of this section, to the District Magistrate, or the Sub-Divisional Magistrate having jurisdiction and specially empowered by the Government in that behalf,—***

***(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 of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer 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 said officer may, by an order in writing duly served on him, or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts or any part thereof contiguous thereto by such route and within such time as the said officer may specify and not to enter, or return to the said place from which he was directed to remove himself.***

***56. Removal of persons convicted of certain offences.—If a person has been convicted at any time either before or after the commencement of this Act,—***

***(a) of an offence under Chapter XII, XVI or XVII of the Indian Penal Code (Central Act 45 of 1860); or***

***(b) of an offence under section 6 of 13 of the Mysore Mines Act, 1906 (Mysore Act 4 of 1906); or***

***(c) of an offence under section 86 of the Karnataka Forest Act, 1963 (Karnataka Act 5 of 1964); or***

***(d) twice of an offence under Section 19 of the Mysore Prohibition of Beggary Act, 1944 (Mysore Act 33 of 1944) or any other***



***corresponding law in force in any area of the State; or***

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

***(f) twice of an offence under the Untouchability (Offences) Act, 1955 (Central Act 22 of 1955); or***

***(g) thrice of an offence within a period of three years under section 78, 79 or 80 of this Act; or***

***(h) thrice of an offence within a period of three years under sections 32, 34, 37 or 38A of the Karnataka Excise Act 1965, (Karnataka Act 21 of 1966),***

***the Commissioner, the District Magistrate, or any Sub-divisional Magistrate specially empowered by the Government in this behalf, 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, may direct such person to remove himself outside the area within the local limits of his jurisdiction or such area or any district or districts or any part thereof contiguous thereto, by such route and within such time as the said officer may specify and not to enter or return to the place from which he was directed to remove himself.***

***Explanation.—For the purpose of this section "an offence similar to that for which a person was convicted" shall mean,—***

***(i) in the case of a person convicted of an offence mentioned in clause (a), an offence***





***falling under any of the Chapters of the Indian Penal Code mentioned in that clause; and***

***(ii) in the case of person convicted of an offence mentioned in clauses (e) and (f), an offence falling under the provisions of the Acts mentioned respectively in the said clauses.***

***57. Period of operation of orders under section 54, 55 or 56.—A direction made under section 54, 55 or 56 not to enter any particular area or such area and any district or districts or any part thereof, contiguous thereto shall be for such period as may be specified therein and shall in no case exceed a period of two years from the date on which it was made.***

***58. Hearing to be given before an order is passed under section 54, 55 or 56.— (1) Before an order under section 54, 55 or 56 is passed against any person, the officer acting under any of the said sections or any officer above the rank of an Inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness, produced by him, the authority or officer concerned shall grant such application and examine such witness, unless for reasons to be recorded in writing the authority or officer is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by a legal***



***practitioner for the purposes of tendering his explanation and examining the witnesses produced by him.***

***(2) The authority or officer 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 54, 55 or 56 require such person to appear before him and to furnish a security bond with or without sureties for such attendance during the inquiry. If the person fails to furnish the security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry and thereupon such order as was proposed to be passed against him may be passed.***

***59. Appeal.—Any person aggrieved by an order made under section 54, 55 or 56 may appeal to the Government within thirty days from the date of such order.***

***60. Finality of orders.—Any order passed under section 54, 55 or 56 or by the Government under section 59 shall not be called in question in any court except on the ground that the authority making the order or any officer authorised by it had not followed the procedure laid down in sub-section (1) of section 58 or that there was no material before the authority concerned upon which it could have based its order or on the ground that the said authority 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 55.***

*(Emphasis supplied)*



Section 55 is removal of persons who were about to commit offences. Whenever it appears in the city of Bangalore or other areas that movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, such person can be removed from that area by passing an order of externment. Section 56 deals with removal of persons convicted of certain offences. Section 57 deals with period of operation of orders passed under Sections 54, 55 or 56. Therefore, Section 57 mandates that the period should be indicated in the order. Section 58 mandates that an opportunity of hearing should be rendered to the person against whom the order is to be passed under Sections 54, 55 or 56. Section 59 permits any person aggrieved by orders passed under Sections 54, 55 or 56 to appeal to the Government within 30 days from the date of such order. This is the statutory frame work under which orders of externment can be passed against any person.



9. The cases against the petitioner are as afore-narrated. The first one is registered way back in the year 2015; second one in the year 2021 and the third one in the year 2022. All for offences punishable under Section 78(3) of the Act and all the three have been closed by imposing penalty by the concerned Court. Therefore, as on date, the situation is that the petitioner is not embroiled in any crime and the crimes that were pending against the petitioner were all for non-cognizable offences, as afore-narrated. In terms of Section 56(g) externment can be passed, if one gets involved for offences under Sections 78, 79 & 80 of the Karnataka Police Act, but it has to be thrice within three years, this is not the situation in the case at hand. In the teeth of the aforesaid provisions of law and the fact that the petitioner is not now involved in any crime, the order requires to be noticed and the relevant portion of which reads as follows:

*“ಎದರುಗಾರನ ವಿರುದ್ಧ ಮೂಡಲಗಿ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ದಾಖಲಾದ ಪ್ರಕರಣಗಳ ವಿವರ ಈ ಕೆಳಗಿನಂತೆ ಇರುತ್ತದೆ. ಗುನ್ನಾ ಸಂಖ್ಯೆ 41/2015 (ದಂಡ-300), 127/2021 (ದಂಡ-1,000), 78/2022*



(ದಂಡ-300) ಹೀಗೆ ಮಾನ್ಯ ಜೆಎಂಎಫ್‌ಸಿ ನ್ಯಾಯಾಲಯವು ದಂಡ ವಿಧಿಸಿದ್ದು ಇರುತ್ತದೆ.

ಎದುರುಗಾರನು ಮೇಲೆ ಈ ಪ್ರಕಾರ ಕ್ರಮ ಜರುಗಿಸಿದ್ದು ಆದರೂ ಸಹ ಅವನು ತನ್ನ ಸ್ವಭಾವದಲ್ಲಿ ಬದಲಾವಣೆಯಾಗದೇ ಮನಃ ಇಲ್ಲಿಯವರೆಗೂ ಅಪರಾಧಗಳನ್ನು ಎಸಗುತ್ತ ಬಂದಿದ್ದು, ತನ್ನ ನಡವಳಿಕೆಯಲ್ಲಿ ಸುಧಾರಿಸಿಕೊಳ್ಳದೇ ಸಮಾಜದಲ್ಲಿ ಒಬ್ಬ ದುಷ್ಯ ಶಕ್ತಿಯಾಗಿ ಬೆಳೆದು ಸಾಮಾಜಿಕ ಸ್ವಾಸ್ಥ್ಯವನ್ನು ಹಾಳು ಮಾಡುತ್ತಿದ್ದು, ಸಮಾಜಘಾತುಕ ಮತ್ತು ಅಪಾಯಕಾರಿ ವ್ಯಕ್ತಿ ಆಗಿದ್ದು ಸಮಾಜಕ್ಕೆ ಕಂಟಕನಾಗಿರುತ್ತಾನೆ. ಕಾರಣ ತಕ್ಷಣವೇ ಎದುರುಗಾರನನ್ನು ಬೈಲಹೊಂಗಲ ಉಪ ವಿಭಾಗ ವ್ಯಾಪ್ತಿಯಿಂದ ಗಡಿಪಾರು ಮಾಡುವುದು ಅತ್ಯವಶ್ಯವಾಗಿರುತ್ತದೆ.

ಎದುರುಗಾರನನ್ನು ಗಡಿಪಾರು ಮಾಡದೇ ಹಾಗೇ ಬಿಟ್ಟಲ್ಲಿ ಆತ ತನಾನ ಅಕ್ರಮ ಚಟುವಟಿಕೆಗಳನ್ನು ಮುಂದುವರಿಸಿಕೊಂಡು ಮುಂದಿನ ದಿನಗಳಲ್ಲಿ ಸಮಾಜದಲ್ಲಿ ಅಶಾಂತತೆಯನ್ನುಂಟು ಮಾಡಿ, ಸಮಾಜದ ಇನ್ನೂ ಕೆಲವು ಜನ ಇಂತಹ ಅಪರಾಧಗಳನ್ನು ಮಾಡುವ ಸಂದರ್ಭ ಇರುವುದರಿಂದ ಸದರಿಯವರನ್ನು ಬೈಲಹೊಂಗಲ ಉಪ ವಿಭಾಗ ವ್ಯಾಪ್ತಿಯಿಂದ ಗಡಿಪಾರು ಮಾಡುವ ಬಗ್ಗೆ ಈ ವರದಿ ಸಲ್ಲಿಸಿ ವಿನಂತಿಸಿರುತ್ತಾರೆ.

ಫೋಲೀಸ್ ಉಪಾಧೀಕ್ಷಕರು ಗೋಕಾಕ ಇವರಿಂದ ಸ್ವೀಕೃತವಾದ ದಾಖಲೆಗಳು, ವರದಿಯನ್ನು ಹಾಗೂ ಪ್ರತಿವಾದಿ ತನ್ನ ವಕೀಲರ ಮೂಲಕ ಸಲ್ಲಿಸಿದ ಲಿಖಿತ ವರದಿಯನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿದೆ. ಆಪಾದಿತ ಮಹಾಂತಯ್ಯಾ ಈರಯ್ಯಾ ರಡರಟ್ಟಿ ಸಾ: ಹಳ್ಳೂರ ತಾ: ಮೂಡಲಗಿ ಈತನು/ಈತನ ಪರ ವಕೀಲರು ಸಲ್ಲಿಸಿದ ಲಿಖಿತ ಹೇಳಿಕೆಯಲ್ಲಿ ಯಾವುದೇ ಸತ್ಯಾಂಶ ಕಂಡುಬರುವುದಿಲ್ಲವಾದುದನ್ನು ಮನಗೊಂಡು ಹಾಗೂ ಈಗಾಗಲೇ ಆಪಾದಿತನಿಗೆ ಮಾನ್ಯ ಜೆಎಂಎಫ್‌ಸಿ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಂಡದ ರೂಪದಲ್ಲಿ ಶಿಕ್ಷೆ ಆಗಿರುವುದರಿಂದ ಈ ಕೆಳಗಿನಂತೆ ಆದೇಶಿಸಲಾಗಿದೆ.



ಆ ದೇಶ

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿದ ಕಾರಣಗಳಿಂದ, ಆಪಾದಿತನ ವಿರುದ್ಧ ಕರ್ನಾಟಕ ಪೊಲೀಸ್ ಕಾಯ್ದೆ 1963 ಕಲಂ 78(3) ರಡಿ ಒಟ್ಟು 03 ಅಪರಾಧಿತ ಕೃತ್ಯಗಳಲ್ಲಿ ಭಾಗಿಯಾಗಿರುತ್ತಾರೆ ಅಂತಾ ಪೊಲೀಸ್ ಅಧಿಕಾರಿಗಳು ಸಲ್ಲಿಸಿದ ವರದಿಯಿಂದ ತಿಳಿದು ಬರುತ್ತದೆ. 03 ಪುಸ್ತಕದಲ್ಲಿ ಶಿಕ್ಷೆಗೆ ಒಳಪಟ್ಟು, ಅಪರಾಧ ಸಂಖ್ಯೆ 41/2015, 127/2021. 78/2022 ಗಳಡಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ದಂಡವಾಗಿ ಆದೇಶವಾಗಿದ್ದು, ಇರುತ್ತದೆ. ಆದಾಗ್ಯೂ ಆಪಾದಿತ ತನ್ನ ನಡವಳಿಕೆಯನ್ನು ಸುಧಾರಣೆ ಮಾಡಿಕೊಳ್ಳದೆ, ಕಾನೂನು ಸುವ್ಯವಸ್ಥೆಗೆ, ಶಾಂತಿ ಭಂಗದ ಪ್ರವೃತ್ತಿ ಹೊಂದಿರುವುದನ್ನು ಮನಗಂಡು, ಆರೋಪಿತನು ಪ್ರತ್ಯಕ್ಷ/ಪರೋಕ್ಷವಾಗಿ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ : ಅಧ್ಯಾಯ 16 ಮತ್ತು 17 ರಲ್ಲಿ ಕಾಣಿಸಿದ ಸಾಮಾಜಿಕ ಸಾಮರಸ್ಯವನ್ನು ಹಾಳು ಮಾಡುವ ಸಾಧ್ಯತೆಯಿರುವುದರಿಂದ ಹಾಗೂ ಗುರುತರ ಅಪರಾಧಿತ ಕೃತ್ಯದಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವುದರಿಂದ ಆಪಾದಿತನನ್ನು ಇಂದಿನಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ಕರ್ನಾಟಕ ಪೊಲೀಸ್ ಕಾಯ್ದೆ 1963 ರ ಕಲಂ 55 & 56 ರನ್ವಯ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರದನ್ವಯ ನಾನು ಎಫ್. ಪ್ರಭಾವತಿ, ಕ.ಆ.ಸೇ, ಉಪವಿಭಾಗೀಯ ದಂಡಾಧಿಕಾರಿ ಬೈಲಹೊಂಗಲ ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ಮಾಡಿರುವ ಅಪರಾಧಿತ ಕೃತ್ಯಗಳ ಬಗ್ಗೆ ಮನವರಿಕೆ ಮಾಡಿಕೊಂಡು ಸಾಮಾಜಿಕ ಸ್ವಾಸ್ಥ್ಯ ಕಾಪಾಡುವ ಸಲುವಾಗಿ ಬೆಳಗಾವಿ ಜಿಲ್ಲೆಯ ಬೈಲಹೊಂಗಲ ಉಪವಿಭಾಗದ ಗಡಿಯಿಂದ ಬಾಗಲಕೋಟೆ ಜಿಲ್ಲೆಗೆ 03 ತಿಂಗಳ ಅವಧಿಗೆ ಗಡಿಪಾರು ಮಾಡಿ ಆದೇಶಿಸಿದೆ.

ಈ ಪ್ರಕಾರ ಆದೇಶ ಜಾರಿಗೊಳಿಸಲು ಆರಕ್ಷಕ ಉಪ ನಿರೀಕ್ಷಕರು ಮೂಡಲಗಿ ಪೊಲೀಸ್ ಠಾಣೆ ಇವರಿಗೆ ಸದರಿ ಆರೋಪಿಯನ್ನು ಬೈಲಹೊಂಗಲ ಉಪವಿಭಾಗದಿಂದ ಬಾಗಲಕೋಟೆ ಜಿಲ್ಲೆಗೆ ಸ್ಥಳಾಂತರಿಸಲು ಸೂಚಿಸಿದೆ.

ಈ ಆದೇಶವನ್ನು ಬೆರಳಚ್ಚುಗಾರರಿಗೆ ಉಕ್ತಲೇಖನ ಕೊಟ್ಟು ಬೆರಳಚ್ಚು ಮಾಡಿಸಿ, ಪರಿಶೀಲಿಸಿ: ಈ ಹೊತ್ತು ದಿನಾಂಕ 28/07/2023 ರಂದು ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಘೋಷಿಸಲಾಯಿತು.”



What is projected is that the petitioner is a dreaded criminal and has the capacity to disturb peace of the surrounding area and has in no way reformed himself from out of the crimes that he has committed and therefore, the order of externment is passed externing the petitioner from Bailhongal Sub-Division to Bagalkot District for a period of three months. If the order is read on the bedrock of the offences and the statute, it would become a classic case of misuse of power for curtailment of fundamental right of a person. It is not in dispute that what is taken away by externing a person is his fundamental right and such power of taking away fundamental right is not to be passed as a matter of course, but will have to be resorted to, sparingly in extraordinary circumstances, as right to movement is what is provided to a citizen under Article 19(1)(d) of the Constitution of India. Reference being made to the judgment of the Apex Court in the case of DEEPAK v. STATE OF MAHARASHTRA<sup>1</sup> wherein interpreting

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<sup>1</sup> 2022 SCC OnLine SC 99



Maharashtra Police Act which is in pari materia with the Act the Apex Court holds as follows:

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**"6. We have given careful consideration to the submissions. Under clause (d) of Article 19(1) of the Constitution of India, there is a fundamental right conferred on the citizens to move freely throughout the territory of India. In view of clause (5) of Article 19, State is empowered to make a law enabling the imposition of reasonable restrictions on the exercise of the right conferred by clause (d). An order of externment passed under provisions of Section 56 of the 1951 Act imposes a restraint on the person against whom the order is made from entering a particular area. Thus, such orders infringe the fundamental right guaranteed under Article 19(1)(d). Hence, the restriction imposed by passing an order of externment must stand the test of reasonableness.**

**7. Section 56 of the 1951 Act reads thus:**

**"56. Removal of persons about to commit offence-**

*(1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or*





*the Sub-Divisional Magistrate specially empowered by the State Government in that behalf (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 of the Penal Code, 1860, or in the abetment of any such offence and when in the opinion of such officer 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 [(bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980 or (2) in any manner prejudicial to the maintenance or supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he*



*thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm [or such prejudicial act], or the outbreak or spread of such disease or [notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as "the specified area or areas") from which he was directed to remove himself.*

*(2) An officer directing any person under sub-section (1) to remove himself from any specified area or areas in the State may further direct such person that during the period the order made against him is in force, as and when he resides in any other areas in the State, he shall report his place of residence to the officer-in-charge of the nearest police station once in every month, even if there be no change in his address. The said officer may also direct that, during the said period, as and when he goes away from the State, he shall, within ten days from the date of his departure from the State send a report in writing to the said officer, either by post or otherwise, of the date of his departure, and as and when he comes back to*



*the State he shall, within ten days, from the date of his arrival in the State, report the date of his arrival to the officer-in-charge of the police station nearest to the place where he may bestaying.*

*(underline supplied)*

**8.** *A perusal of sub-section (1) of Section 56 shows that there are distinct grounds specified under sub-section (1) of Section 56 for passing an order of externment. The said grounds are in clauses (a), (b), (bb), and (c). In the present case, clauses (a) and (b) of sub-section (1) of Section 56 of the 1951 Act have been invoked. The ground in clause (a) is that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to a person or property. The ground in clause (b) is 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 in IPC, or the abetment of any such offence. Clause (b) is qualified by a condition that the competent authority empowered to pass such order should be of the opinion that 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. Obviously, the opinion must be formed on the basis of material on record.*

**9. As observed earlier, Section 56 makes serious inroads on the personal liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India. In the case of Pandharinath Shridhar Rangnekar v.**



***Dy. Commr. of Police, State of Maharashtra<sup>1</sup> in paragraph 9, this Court has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision, this Court held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with. This Court also held that the requirements of Section 56 must be strictly complied with.***

***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 their 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).***

**11.** On 2<sup>nd</sup> June 2019, the Police Inspector of Badnapur Police Station, District Jalna submitted a proposal to the Judicial Magistrate, First Class at Badnapur for permitting detention of the appellant for a period of 15 days by invoking provisions of sub-section (3) of Section 151 of Cr.PC (as inserted by the Maharashtra Act No. 7 of 1981). In the said proposal, reliance was placed on the same six offences registered against the appellant, which were made a part of the show-cause notice dated 7<sup>th</sup> July 2020 on the basis of which the impugned order of externment was passed. The



*police arrested the appellant and produced him on 2<sup>nd</sup> June 2020 before the learned Judicial Magistrate, First Class along with the aforesaid proposal. By the order dated 2<sup>nd</sup> June 2020 (Annexure P-4), the learned Judicial Magistrate rejected the said proposal to detain the appellant and directed his immediate release subject to the condition of attending the concerned Police Station between 10 am to 1 pm till 9<sup>th</sup> June 2020.*

**12.** *The power under sub-section (3) of Section 151 as amended for the State of Maharashtra is to arrest a person on the basis of an apprehension that he is likely to continue the design to commit, or is likely to commit a cognizable offence after his release and that the circumstances of the case are such that his presence is likely to be prejudicial to the maintenance of public order. The learned Judicial Magistrate rejected the proposal to keep the appellant in detention for 15 days. There is nothing placed on record to show that the said order was challenged by the police. After having failed to satisfy the learned Judicial Magistrate about the necessity of detaining the appellant for 15 days, the Sub-Divisional Police Officer initiated action of externment against him by issuing a show-cause notice on 7<sup>th</sup> July 2020. It is not the case made out in the show cause notice dated 7<sup>th</sup> July 2020 that after release of the appellant on 2<sup>nd</sup> June 2020, the appellant indulged in the commission of any offence or any other objectionable activity.*

**13.** ***Considering the nature of the power under Section 56, the competent authority is not expected to write a judgment containing elaborate reasons. 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, the 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.***

**14.** *In the facts of the case, the non-application of mind is apparent on the face of the record as the order dated 2<sup>nd</sup> June 2020 of the learned Judicial Magistrate is not even considered in the impugned order of externment though the appellant specifically relied upon it in his reply. This is very relevant as the appellant was sought to be detained under sub-section (3) of Section 151 of Cr.PC for a period of 15 days on the basis of the same offences which are relied upon in the impugned order of externment. As mentioned earlier, from 2<sup>nd</sup> June 2020 till the passing of the impugned order of externment, the appellant is not shown to be involved in any objectionable activity. The impugned order appears to have been passed casually in a cavalier manner. The*



*first three offences relied upon are of 2013 and 2018 which are stale offences in the sense that there is no live link between the said offences and the necessity of passing an order of externment in the year 2020. The two offences of 2020 alleged against the appellant are against two individuals. The first one is the daughter of the said MLA and the other is the said Varsha Bankar. There is material on record to show that the said Varsha Bankar was acting as per the instructions of the brother of the said MLA. The said two offences are in respect of individuals. There is no material on record to show that witnesses were not coming forward to depose in these two cases. Therefore, both clauses (a) and (b) of subsection (1) of Section 56 are not attracted.*

**15. As the order impugned takes away fundamental right under Article 19(1)(d) of the Constitution of India, it must stand the test of reasonableness contemplated by clause (5) of Article 19. Considering the bare facts on record, the said order shows non-application of mind and smacks of arbitrariness. Therefore, it becomes vulnerable. The order cannot be sustained in law.**

**16.** Section 58 of the 1951 Act reads thus:

**"58.** Period of operation of orders under section 55, 56, 57 and 57A - A direction made under section 55, 56, 57 and 57A not to enter any particular area or such area and any District or Districts, or any part thereof, contiguous thereto, or any specified area or areas as the case maybe, shall be





*for such period as may be specified therein and shall in no case exceed a period of two years from the date on which the person removes himself or is removed from the area, District or Districts or part aforesaid or from the specified area or areas as the case may be”.*

**17.** *On a plain reading of Section 58, it is apparent that while passing an order under Section 56, the competent authority must mention the area or District or Districts in respect of which the order has been made. Moreover, the competent authority is required to specify the period for which the restriction will remain in force. The maximum period provided for is of two years. Therefore, an application of mind on the part of the competent authority is required for deciding the duration of the restraint order under Section 56. On the basis of objective assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for a specific period. When the competent authority passes an order for the maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record. Careful perusal of the impugned order of externment dated 15<sup>th</sup> December 2020 shows that it does not disclose any application of mind on this aspect. It does not record the subjective satisfaction of the respondent no. 2 on the basis of material on record that the order of externment should be for the maximum period of two years. If the order of externment for the maximum permissible period of two years is passed without recording subjective satisfaction regarding the necessity of extending the order of externment to the maximum permissible period, it will amount to imposing unreasonable restrictions on the*



*fundamental right guaranteed under clause (d)  
of Article 19(1) of the Constitution of India.”  
(Emphasis supplied)*

The Apex Court clearly holds that it must stand the test of reasonableness as contemplated in Clause-5 of Article 19 of the Constitution of India for an externment order to be passed and bare scrutiny at the hands of the constitutional courts.

10. The crux of the afore-quoted provisions of law which empower externment of a person would undoubtedly mean that there should be minimum proximity or necessity for passing an order of externment. There is no proximate incident that is narrated in the impugned order. Without any foundation the order projects the petitioner as a bane to the society or the surrounding area. Therefore, in the considered view of this Court, the order impugned would not stand the test of reasonableness as obtaining under Article 19(5) of the Constitution of India. If the facts of the case are considered on the bedrock of the statute and the principles



laid down by the Apex Court in the case of Deepak (supra) the order impugned would lose its legal legs to stand and would be rendered unsustainable. Unsustainability of the order would lead to its obliteration.

11. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The order dated 28.07.2023 passed by the 2<sup>nd</sup> respondent extorning the petitioner stands quashed.
- (iii) The petitioner shall be entitled to all consequential benefits that was flown before quashment of the order dated 28-07-2023.

**Sd/-**  
**JUDGE**

Vnp\*/Ct:Bck  
List No.: 1 Sl No.: 64