

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.392 OF 2023 (GM - POLICE)

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**BETWEEN:**

SRI T.ROOPESHKUMAR @ ROOPI,

... PETITIONER

(BY SRI SATISHA. D.J., ADVOCATE)

**AND:**

- 1 . STATE OF KARNATAKA,  
REPRESENTED BY SECRETARY,  
DEPARTMENT OF HOME  
VIDHANA SOUDHA,  
BENGALURU - 560 001.
- 2 . ASSISTANT COMMISSIONER,  
CUM SUB DIVISIONAL MAGISTRATE,  
TUMKURU SUB DIVISION,  
TUMAKURU - 572 101.

3 . DEPUTY SUPERINTENDENT OF POLICE,  
KUNIGAL SUB DIVISION,  
KUNIGAL - 572 130.

4 . POLICE SUB INSPECTOR,  
HULIYURDURGA POLICE STATION,  
KUNIGAL TALUK,  
KUNIGAL - 572 123.

... RESPONDENTS

(BY SRI M.VINOD KUMAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER AT ANNEXURE - D DATED 15/12/2022 CASE IN MAG NO. 25/2022 PASSED BY THE R2 I.E. ASSISTANT COMMISSIONER, CUM SUB DIVISIONAL MAGISTRATE, TUMKUR SUB DIVISION TUMKUR AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.03.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner is before this Court calling in question order dated 15-12-2022 passed by the 2<sup>nd</sup> respondent/Assistant Commissioner extorning the petitioner from Kunigal Taluk.

2. Heard Sri D.J. Satisha, learned counsel appearing for the petitioner and Sri M. Vinod Kumar, learned Additional Government Advocate appearing for the respondents.

3. Facts in brief, that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner is a resident of Kunigal Taluk. No other issue regarding his residence need be gone into. The petitioner gets embroiled in several criminal cases. The cases pending against the petitioner as on date are (i) Crime No.108 of 2019 which comes to be registered on 26-06-2019 for offence punishable under Section 87 of the Karnataka Police Act, 1963 (hereinafter referred to as 'the Act' for short) and the Police having filed the charge sheet in the said case, it is pending before the Senior Civil Judge and JMFC at Kunigal in C.C.No.3697 of 2022. (ii) The second crime that is registered against the petitioner in Crime No.24 of 2020 on 01-03-2020 is again for offences punishable under Section 87 of the Act. The Police have filed a charge sheet in respect of the said crime in C.C.No.3610 of 2022 before the same Court. (iii) The third crime that is registered against the petitioner is in Crime No.195 of 2021 on 18.12.2021 for offences punishable under Sections 341, 504, 323, 363 and 34 of the IPC. The Police after investigation have

filed a charge sheet in this case also in C.C.No.132 of 2022. These are admitted cases that are pending against the petitioner.

4. The petitioner was also accused in several crimes in the past. In C.C.No.538 of 2017 for offences punishable under Section 379 of IPC, Sections 4(1A) and 21(1) of MMRD Act, Sections 3, 42 and 44 of Karnataka Minor Mineral Consistent Rules, 1994 and Sections 3 and 181 of the Indian Motor Vehicles Act and the petitioner gets acquitted on 27-12-2018. The other crime was for offences punishable under Section 379 of IPC in C.C.No.616 of 2017 in which also the petitioner is acquitted on 24-07-2019. The third crime that was registered against the petitioner was for offences under Section 269 of IPC and Section 87 of the Act in C.C.No.109 of 2022. This also ends in acquittal on 22-09-2022. Therefore, the three earlier cases that were pending against the petitioner have ended in acquittal and the three afore-mentioned are pending consideration.

5. In the light of the aforesaid pending cases, the 4<sup>th</sup> respondent/Station House Officer of Huliurdurga Police Station

submits a report against the petitioner furnishing all details of cases pursuant to which the 3<sup>rd</sup> respondent/ Deputy Superintendent of Police communicates to the Assistant Commissioner to pass an order of externment against the petitioner. The 2<sup>nd</sup> respondent issues a notice to the petitioner on 24-11-2022 to appear before him seeking explanation as to why he should not be externed from Kunigal Taluk. On 15-12-2022 an order of externment is passed against the petitioner by the 2<sup>nd</sup> respondent.

6. The learned counsel appearing for the petitioner contends that the notice issued to the petitioner did not contain the report and without calling for explanation of the petitioner on the basis of the report, the order of externment is passed contrary to Section 58 of the Act. He would further contend that there was no allegation to show that the petitioner is destroying public peace in the area for him to be externed from Kunigal Taluk. Out of 6 cases that were registered against the petitioner, in three of them he is acquitted and three of them are pending consideration in which also he is hopeful of getting acquitted. He would contend that the order of externment suffers from the vice of illegality.

7. The learned Additional Government Advocate would refute the submissions to contend that all opportunities that are necessary to be provided to the petitioner have been adequately afforded and the petitioner has become a nuisance in the area as every now and then he was committing crime and, therefore, on the basis of the report of the 4<sup>th</sup> respondent/Station House Officer, the action is taken in terms of Sections 55 and 56 of the Act and seeks dismissal of the petition.

8. Before embarking upon consideration of the case on its merits, I deem it appropriate to notice the legal frame work under which 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. Section 58 needs to be considered with certain emphasis. Section 58 is the provision which depicts grant of reasonable opportunity to the person against whom an order of externment would be passed. Section 58 mandates that the Officer acting under Sections 54, 55 and 56 shall inform the person in writing of the general nature of material allegations against him and give him a

reasonable opportunity of tendering an explanation regarding them. If such a person makes an application for examination of any witness the officer shall grant such application, unless for reasons to be recorded in writing the Officer is of the opinion that the application is filed for the purpose of vexation or delay. Therefore, the provision makes it mandatory for grant of reasonable opportunity and also permits the person against whom order of externment is to be passed to call any witness and examine him by filing an application. If this is the right conferred upon a person under Section 58, the report on which he is to be externed must be mandatorily supplied which would include the notice so issued to the person against whom externment order is pending issuance. There cannot be any other interpretation of the aforesaid provision as it is in the realm of grant of a reasonable opportunity before taking away the fundamental right of any person.

10. The afore-narrated facts are cases where the petitioner was an accused. What is pending consideration is necessary to be noticed. Three cases where the petitioner is an accused two cases – C.C.No.3607 of 2022 and C.C.No.3610 of 2022 - are for offences

punishable under Section 87 of the Act, a non-cognizable offence. The only case pertaining other than the aforesaid non-cognizable offence is C.C.No.132 of 2022 for offences punishable under Sections 341, 504, 323, 363 and 34 of IPC which is pending trial. The petitioner in the past had got himself embroiled in three other cases which have all been acquitted and therefore, reference to those cases is unnecessary. Substantially what remains as an offence against the petitioner is C.C.No.132 of 2022 and for a solitary case whether the order of externment would stand the test of law is what is necessary to be answered. The answer to this issue need not detain this Court or delve deep into the matter as the Apex in the case of **DEEPAK v. STATE OF MAHARASHTRA**<sup>1</sup> has considered the purport of the order of externment and its impact upon the fundamental right of the person. The Apex Court considers the Maharashtra Police Manual which is in *pari materia* with the Act and holds as follows:

**"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**

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

**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 be staying.

(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 externment is not an ordinary measure and must be resorted to sparingly, only in extraordinary circumstances, as an order of externment takes away the fundamental right of movement under Article 19(1)(d) of the Constitution of India. Therefore, the Apex Court has clearly held that it must stand the test of reasonableness as contemplated in Clause (5) of Article 19 of Constitution of India. Since the interpretation of the Apex Court of the provisions of the Maharashtra Police Act are in *pari materia* with the Act, it would become applicable to the case at hand. The crux of the provision is that there should be minimum proximity or necessity for passing an order of externment against any person, in the case at hand the petitioner. The description of cases against the petitioner are all noticed hereinabove, all of which would lead to an unmistakable conclusion that, on a solitary case of offences under the IPC, fundamental right of the petitioner could not be taken away and in the considered view of this Court it would not stand the test of

reasonableness as obtaining under Article 19(5) of the Constitution of India. If the facts of the case on hand are considered on the bedrock of 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.

11. Yet another factor that is to be noticed is that the order being contrary to the mandate of Section 58. Section 58 (*supra*) directs grant of reasonable opportunity. The Authorities must remember that what is being taken away from the citizen is a fundamental right. Therefore, reasonable opportunity that is mandated under Section 58 must be scrupulously adhered to, and if such adherence is to be discernible at the bare minimum furnishing of a report against the person against whom the order of externment is pending issuance to the said person. The petitioner or the like is entitled to know as to why an order of externment is being passed and on the basis of what? It is an admitted fact, in the case at hand, no report was even made available to the petitioner at the time of issuance of show cause notice nor was he provided with such report at the time when he appeared before the 2<sup>nd</sup>

respondent in answer to a notice. Since Section 58 mandates examination of witnesses also as a right of the person against whom order of externment would be passed, furnishing of a report upon him becomes imperative and if that cannot be done it should be for reasons to be recorded in writing, as there can be situations where there is impending urgency or extenuating circumstances where a person has to be externed without any loss of time. It is then those reasons should be recorded in writing in adherence to Section 58.

12. It is admitted fact in the case at hand that none of those situations have arisen for immediate order of externment to be passed against the petitioner. Even on that score the order of externment passed against the petitioner is rendered unsustainable. On both these counts – one being no circumstance warranting curtailment of fundamental right of the petitioner in terms of what is laid down by the Apex Court in the case of **DEEPAK** (*supra*) and the other, being the order in gross violation of Section 58 of the Act - the petition deserves to succeed.

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

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The order dated 15.12.2022 passed by the 2<sup>nd</sup> respondent stands quashed.
- (iii) Petitioner is declared entitled to all consequential benefits that would flow from quashment of the orders.

**Sd/-  
JUDGE**

bkp  
CT:SS