

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 14628/2019

Bhanwarlal

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary To The Government, Department Of Home, Government Of Rajasthan, Jaipur.
2. Superintendent Of Police, Bikaner
3. Station House Officer, Police Station Gangasheher, Bikaner.
4. Additional District Magistrate (Nagar), Bikaner.
5. Divisional Commissioner, Bikaner.

----Respondents

For Petitioner(s) : Mr. Pravin Vyas

For Respondent(s) : Mr. Anil Kumar Bissa, AGC

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
Order

21/07/2022

Heard learned counsel for the parties.

The present writ petition has been filed against the order dated 14.03.2018/2019 (Annex. 2), the amended order dated 15.04.2019 (Annex. 3) passed by the Additional District Magistrate (city), Bikaner and the appellate order dated 11.06.2019 (Annex. 4) passed by the Divisional Commissioner, Bikaner. Vide order impugned, the petitioner was declared as a "Goonda" and an order of externment was passed against him by the Additional District Magistrate (City), Bikaner.

Learned counsel for the petitioner submits that the order dated 14.03.2018 was passed without considering the fact and the requirement of Section 3 of the Rajasthan Control of Goondas Act 1975 (for short the Act of 1975). He further submits that as per

Section 3 of the Act, the authority concerned is required to apply its mind and should have reasonable grounds for believing that a person is engaged or about to engage, in the District or any part thereof, in the commission or abetment of any offence or act specified in sub-clauses (i) to (viii) of clause (b) of Section 2 of the Act. He further submits that merely because two cases were registered against the petitioner under the RPGO Act and on the basis of the statement of the Police Officer, the order impugned has been passed. He further submits that no reasons have been mentioned in the order for fulfilling the requirement of Section 3 of the Act of 1975. He further submits that even the amended order dated 15.04.2019 was passed without giving any opportunity of hearing to the petitioner.

Learned counsel further submits that the appellate authority also confirmed the order passed by the learned Additional District Magistrate, Bikaner on the same reasons and without proper discussion and reasoning in the order. He, therefore, submits that the order passed curtails liberty of the petitioner directly contravenes Article 21 of the Constitution of India. Thus, proper care should have been taken by the authorities below while passing such orders. Since stern action was taken, the authorities are under an obligation to have a strict proof of the adverse effect which the petitioner may cause in the area.

Learned counsel further submits that the orders passed by the authorities below are arbitrary and illegal. He, therefore, prays that the writ petition may kindly be allowed and the impugned orders may be quashed and set aside.

Learned counsel for the respondents vehemently argued that the petitioner is an habitual offender and is a threat to the society

at large. He further submits that not only two cases rather there are 14 cases have been registered against the petitioner showing his character and by virtue of these cases having been registered against him, the petitioner can easily be termed as a habitual offender. The authorities, therefore, have rightly taken into consideration the material placed before them while arriving at a decision of declaring the petitioner as "Goonda" and passing an order of externment from the District Bikaner. He, therefore, prays that no interference is warranted by this Court in the orders passed by the competent authorities below.

I have considered the submissions made at the Bar and have gone through the orders impugned as well as other relevant record of the case.

The fact that two cases under RPGO were registered against the petitioner prior to passing of the order dated 14.03.2018/2019 which has been taken note of. Learned Additional District Collector, Bikaner had also taken into consideration the statement of the Police Officer made before him and came to the conclusion that the petitioner is involved in the notorious activities and therefore, in order to prevent the law and order situation in the area, the externment of the petitioner is found necessary and thus, the learned Additional District Magistrate, Bikaner passed an order of externment on 14.03.2018/2019.

A bare perusal of the order dated 14.03.2018/2019 shows that the authority concerned has stated that two cases under the RPGO were registered against the petitioner and there is no fear of law and order in the petitioner's mind and the people of the area are also afraid of giving their statement against the petitioner. This Court feels that for arriving at such a conclusion

the authority concerned was required to have sufficient material and evidence for the same. Since there is no material to arrive at such conclusion, this Court also feels that the learned Additional Collector proceeded in the matter without any foundation and sufficient material..

In the opinion of this Court, since the requirement of Section 3 clearly shows that if there are reasonable grounds for believing that a person is engaged or about to engage in the commission or abetment of any offence and that the witnesses are not willing to come forward to give evidence against the petitioner by reason of apprehension on their part, then for such purpose, the sufficient evidence is required to be produced before the authority concerned for arriving at a decision. Since the same is missing in the present case, the order dated 14.03.2018/2019 cannot be said to be in consonance with the law. Moreover, when the Rajasthan Control of Goondas Act 1975 imposes strict conditions to be employed by the authorities concerned. On the same lines, the order dated 15.04.2019 and appellate order dated 11.06.2019 are not sustainable.

In these circumstances, the Co-ordinate Bench of this Court while deciding **S.B. Civil Writ Petition No. 16010/2012 (Ajit Singh Vs. State of Rajasthan and Ors.)** on 12.12.2012 held as under:-

"5. Having heard the counsel for the petitioner and the respondent and having perused the impugned order, I am of the view that the statutory authorities below have not taken into consideration and / or applied their mind to the question of the alleged criminal activities of the petitioner not being capable of control and prevention under the ordinary law for the reason that witnesses were not willing to come forward to give evidence against the petitioner by

reason of apprehension on their part with regard to the safety of their person and property. In my considered opinion, as the Act of 1975 is draconian in nature and the three conditionalities for passing an order of externment are cumulative, the non-consideration of the aspect referred above by the statutory authorities vitiates the order of externment dated 01.05.2012 as upheld by the Divisional Commissioner, Jaipur Divison, Jaipur on 12.06.2012.”

Since the order of externment is an order which curtails the life and liberty of a person, the same is required to be passed with due care and caution and after having the evidence collected and placed before the authorities concerned for arriving at a decision for declaring the person a *Goonda* and passing the order of externment, which is missing in the present case.

In view of the discussions made above, the present writ petition merits acceptance, the same is allowed and the order dated 14.03.2018/2019, the amended order dated 15.04.2019 passed by the Additional District Magistrate (city), Bikaner and the appellate order dated 11.06.2019 passed by the Divisional Commissioner, Bikaner are quashed and set aside.

However, this Court feels that if the authorities concerned are having ample material to proceed against the petitioner, they will be free to proceed against him strictly in compliance of the provisions of the Act of 1975.

(VINIT KUMAR MATHUR),J