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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6430 of 2020
With
R/SPECIAL CRIMINAL APPLICATION NO. 6111 of 2020

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DIGESH HARISHCHANDRA SOLANKI
&
HARISHCHANDRA MOTILAL SOLANKI ...PETITIONERS

Versus

STATE OF GUJARAT & ANR ...RESPONDENTS

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Appearance:

MR ZUBIN F BHARDA, ADVOCATE for the PETITIONERS
MR HARDIK SONI, APP for the Respondent – State Authorities.

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CORAM: **HONOURABLE MR. JUSTICE PARESH UPADHYAY**

Date : 11/01/2021

ORAL ORDER

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1. Both these petitions, filed by the son and his father, arise from different but identical externment orders passed by the Sub-Divisional Magistrate, Navsari dated 04.02.2020 recorded on Externment Case No.72 & 71 of 2019 respectively, as modified by the Appellate Authority vide different but identical orders dated 10.09.2020 recorded on Externment Appeal No.37 & 36 of 2020 respectively.

2. Mr.Bharda, learned advocate for the petitioners has taken this Court through the notice, reply thereto, the contents of the impugned order passed by the Sub-Divisional Magistrate, the grounds mentioned in the appeal before the Appellate Authority of the State and the contents of the order passed by

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the Appellate Authority and has submitted that the Externment Authority has passed the impugned orders to facilitate the working of a private contractor. Attention of the Court is invited to the stand of the SDM before the Appellate Authority, as reflected in the order dated 10.09.2020 which in substance is, as if the Sub-Divisional Magistrate was holding the brief on behalf of a private contractor, at whose instance the externment order was passed. Serious grievance is also made that the Externment Authority was not even present in the office when the petitioners were called to make representation. It is submitted that though the notice was issued under Section 56(a) of the Gujarat Police Act, the order was passed under 56(b) of the Act. It is submitted that the impugned order be quashed and set aside and exemplary cost be imposed. Reliance is placed on (i) the decision of the Supreme Court of India in the case of Nawabkhan Abbaskhan Vs. State of Gujarat reported in (1974) 2 SCC 121, (ii) decision of this Court in the case of Abdulgafoor Mohammad Hussain Pathan Vs. Sub Divisional Magistrate recorded on Special Criminal Application No.104 of 2006 dated 20.07.2006 and (iii) decision of this Court in the case of Mustufamiya Pirsahedmiya Saiyed Vs. State of Gujarat reported in 1999 (1) G.L.H. 913.

3. On the other hand, Mr.Hardik Soni, learned Additional Public Prosecutor for the respondents has supported the externment order. It is submitted that this petition be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under.

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4.1 The notice for externment was issued under Section 56(a) of the Act. The order is passed under Section 56(b) of the Act. No notice was given to the petitioner about this. The impugned order therefore needs to be set aside on this count alone.

4.2 The externment is dated 04.02.2020. It is to remain in force for a period of one year. That period is to expire within less than a month now.

4.3 Even if the aspect of the SDM not present in the office is not gone into, having examined the matter on merits, this Court further finds that, it is a matter of record that these petitioners are father and son. The father is a retired police officer. They are office bearers of a co-operative housing society in which they are residing. The dispute is essentially between the society where the petitioners are residing and the adjoining society, where constructions work was going on. The dispute was thus a private dispute between two persons / societies. The FIR in question specifically refers to this dispute. The witnesses have come forward.

4.4 The Externing Authority asked the present petitioners to settle the dispute with the contractor and since that settlement did not materialise, the externment order is passed. These facts are borne out from the contents of the order passed by the Appellate Authority, more particularly the stand of the SDM, as reflected therein. These statements would go to show that the SDM was holding the brief for the contractor, and since the petitioners did not settle with the contractor, they -

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the father and son both are externed for a period of one year.

4.5 On conjoint consideration of the above, this Court finds that the powers under Sections 56(b) of the Act, could not have been exercised by the Externing Authority to facilitate the commercial activity of a private individual. Not only the impugned order is unsustainable on these counts, it smacks of lack of bona fide and under no circumstances, the impugned orders can be termed as, orders made / passed 'in good faith' by a Statutory Authority. The same therefore need to be quashed and set aside.

4.6 Even the Appellate Authority has also very casually dealt with the appeals. Since the externment period is about to be over, further inquiry is not made in that regard.

4.7 In totality, on facts this Court finds that, the exercise of power by the Externing authority, was not bona fide, it was more to facilitate a private commercial activity of a private individual. The impugned externment orders can not be said to have been passed in good faith, and therefore, while setting aside the impugned orders, the aspect of compensation to the petitioners is kept open.

4.8 The glaring aspect of the matter is that, for the entire year, the father and son - both the male members of the family, in this CORONA lock down period were asked to stay away from their home, leaving lady family members and children alone at home. All these aspects would be relevant to weigh, what amount of compensation should be granted, in appropriate proceedings.

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5. For the reasons recorded above, the following order is passed.

5.1 Both these petitions are allowed.

5.2 The externment orders passed by the Sub-Divisional Magistrate, Navsari dated 04.02.2020 recorded on Externment Case No.72 & 71 of 2019 respectively, as modified by the Appellate Authority vide orders dated 10.09.2020 recorded on Externment Appeal No.37 & 36 of 2020 respectively are quashed and set aside.

5.3 The question of awarding cost / compensation to the petitioners is kept open. The said aspects may be gone into by appropriate forum, in appropriate proceedings as may be taken up by the petitioners.

5.4 Rule is made absolute in above terms.

MOBHATI/PS/07

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THE HIGH COURT
OF GUJARAT (PARESH UPADHYAY, J)
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