HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

W.P. No.9213 of 2021

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon'ble Shri Justice Subodh Abhyankar

Writ Petition No.9213 of 2021

Gangaram S/o Shri Kanha Ji

Versus

Commissioner, Indore Division & another

(Case was heard on 17/11/2021)

Counsel for the Parties	:	Shri Lucky Jain, Counsel for the petitioner. Shri Valmik Shakargayen, Counsel for the respondents/State.
Whether approved for reporting	:	Yes
Law laid down	:	1. This Court has no hesitation to hold that this Court would have jurisdiction to decide this dispute between the parties and to look into legality and proprietary of the order passed by the District Magistrate, Burhanpur falling within the territorial jurisdiction of Principal Seat at Jabalpur which has been affirmed in appeal by the Commissioner, Indore Division within the jurisdiction of Indore bench of this court. **(Para 8)** 2. In case of externment order, it is the nature of the case and not the number of cases which is relevant for the purposes of initiating an externment proceedings, as it may be that only one case of serious nature would suffice to pass an order of externment whereas, number of cases of trivial nature would not be sufficient to initiate the externment proceedings. **(Para 9)** 3. In the matter of show cause notice, this Court in the case of **Sudeep Patel vs. The State of M. P. (M. P. No.904/2017)** on **09.01.2018** has already held that the purpose of initiation of externment proceedings is to restrain a person from committing another offence in the near future and in such circumstances the order of externment must be passed within the close proximity of the offences committed by the petitioner. **(Para 10)** 4. Reference of second criminal case in the impugned order for the first time, registered against the petitioner after two years of committing the first offence, without giving him any opportunity to rebut the same was also not appropriate on the part of the District Magistrate, Burhanpur, which clearly runs against the principles of natural justice. **(Para 11)**
Judgements relied upon		**Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Ors.** reported in **(2004) 6 SCC 254** ; and **Sudeep Patel vs. The State of M. P.** passed in **M. P. No.904/2017** on **09.01.2018.**
Significant paragraph numbers	:	**7,8,9 ,10 and 11**

O R D E R

(Case was heard on 17/11/2021)

Post for

30/12/2021

(SUBODH ABHYANKAR)
JUDGE

Pankaj

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****

Shri Lucky Jain, Counsel for the petitioner.

Shri Valmik Shakargayen, Counsel for the respondents/State.

* * * * *

O R D E R

(**Passed on 30/12/2021**)

This petition has been filed against the order dated 16.03.2021 passed by the respondent No.1 Commissioner, Indore Division as also the order dated 07.12.2020 passed by the respondent No.2 District Magistrate (Collector), Burhanpur. Vide order dated 07.12.2020 the District Magistrate, Burhanpur has passed the order of externment against the petitioner, externing the petitioner from the District Burhanpur and the adjoining districts, namely, Khandwa, Khargone, Harda and Badwani for a period of one year. The aforesaid order was challenged before the Commissioner, Indore Division, who vide its order dated 16.03.2021 has affirmed the order of externment.

2. In brief, the facts giving rise to the present petition are that on 24.09.2018, a case was registered against the petitioner and nine other persons on the complaint of the Forest Officer, Aseer-Beat Khatla under Section 26 of the Indian Forest Act, 1927 and Sections 3 and 7 of

Biological Diversity Act, 2002 wherein it was alleged that the petitioner and the other accused persons were cutting the trees and were also tiling the forest land. It is alleged against the petitioner that he had incited the tribal of the area to encroach upon the forest land by organizing Rallys, *Dharnas,* by giving provocative speeches. On 11.09.2020 the Forest Officer, Burhanpur, i.e. after around two years of the lodging of the FIR against the petitioner, has recommended to the respondent No.2 – District Magistrate, Burhanpur to proceed against the petitioner under M.P. Rajya Surakasha Adhiniyam, 1990 for his externment as the petitioner had continuously indulged in various criminal activities and the prohibitory actions taken against him has not deterred him from indulging in illegal activities. On this report of Divisional Forest Officer, after the show cause notice was issued to the petitioner on 25.09.2020, a reply was also filed by the petitioner and subsequently the residents of village Khatla have also given the affidavit in support of the petitioner regarding his good conduct. A written argument was also filed on his behalf on 13.10.2020. The final impugned order was passed by the District Magistrate, Burhanpur on 07.12.2020 on the ground that two cases have been registered against the petitioner, which has disturbed the harmony and social fabric of the area as the petitioner has continuously indulged in criminal activities since 2003.

3. Counsel for the petitioner has submitted that prior to issuance of notice, only one case was registered against the petitioner and that too in

the year 2018 and the other case, which has been referred to in the impugned order, relates to another offence registered against the petitioner at Crime No.390 of 2020, at Police Station Nimbola under Sections 147, 148, 149, 353, 294, 506 and 332 of IPC, but the aforesaid criminal case was not included in the show cause notice and thus, the petitioner was taken aback when the aforesaid offence also found place in the impugned order. Thus, it is submitted that it is the violation of principles of natural justice as the show cause notice itself was not issued in respect of the second offence, which was subsequently registered against the petitioner. Counsel has submitted that otherwise also the petitioner is a political activist and has never indulged in any criminal activity. Thus, it is submitted that the impugned order passed by the District Magistrate as also the order passed by the Commissioner, Indore Division are liable to be set aside.

4. A preliminary objection has been raised by the respondents regarding the jurisdiction of this Court to decide the case as according to the respondents, the impugned order has been passed by the District Magistrate, Burhanpur under whose territorial jurisdiction the case of action arose and only an appeal has been preferred against the aforesaid order before the Commissioner, Indore Division, which does not give any jurisdiction to this Court as for the purposes of filing of the petition it has to be seen that which authority has passed the original order and where the cause of action has arisen. So far as the merits of the case are

concerned, it is submitted that no illegalities have committed by both the authorities and thus, the petition is liable to be rejected.

5. In rebuttal, Counsel for the petitioner has relied upon paras 27 and 28 of a decision rendered by the Hon'ble Supreme Court in the case of **Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Ors.** reported in **(2004) 6 SCC 254** to submit that even the place where an appeal has been preferred against the order passed by an original authority, which is at a different place, the High Court under which the appellate authority is situated would have the jurisdiction.

6. Heard Counsel for the parties and perused the record.

7. So far as the territorial jurisdiction of this Court to decide the case is concerned, the Hon'ble Supreme Court in the case of **Kusum Ingots and Alloys Ltd.** (supra) in paras 27 and 28 has held as under:-

> "27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."
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> (emphasis supplied)

8. In view of the aforesaid dictum of the Hon'ble Supreme Court, this Court has no hesitation to hold that this Court would have jurisdiction to

decide this dispute between the parties and to look into legality and proprietary of the order passed by the District Magistrate, Burhanpur falling within the territorial jurisdiction of Principal Seat at Jabalpur which has been affirmed in appeal by the Commissioner, Indore Division within the jurisdiction of Indore bench of this court.

9. So far as the merits of the case are concerned, it is apparent from the impugned order that the petitioner has been externed on the ground of two cases having registered against him. Although, this court is of the considered opinion that it is the nature of the case and not the number of cases which is relevant for the purposes of initiating an externment proceedings, as it may be that only one case of serious nature would suffice to pass an order of externment whereas, number of cases of trivial nature would not be sufficient to initiate the externment proceedings.

10. It is also not disputed that in the show cause notice, reference of only one case was made, which was registered on 24.09.2018; and the show cause notice was issued on 11.09.2020 i.e. after almost two years of the registration of the offence, whereas the impugned order has been passed by the District Magistrate, Burhanpur on 07.12.2020. Thus, it is apparent that not only that the impugned order has been passed after two years of the case registered against the petitioner, but it also contained reference of one more case registered against the petitioner on 14.10.2020. This Court in the case of **Sudeep Patel vs. The State of M. P.** passed in **M. P. No.904/2017** on **09.01.2018** has already held that the

purpose of initiation of externment proceedings is to restrain a person from committing another offence in the near future and in such circumstances the order of externment must be passed within the close proximity of the offences committed by the petitioner. The relevant paras of the same are reads as under:-

> "8. In the considered opinion of this Court, the learned District Magistrate while passing the impugned order was oblivious of the statement of object and reasons of Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 which provides as under :
>
> **"STATEMENT OF OBJECT AND REASONS**
>
> For want of adequate enabling provisions in existing laws for taking effective preventive action to counteract activities of anti-social elements Government have been handicapped to maintain law and order. In order to take timely and effective preventive action it is felt that the Government should be armed with adequate power to nip the trouble in the bud so that peace, tranquility and orderly Government may not be endangered.
>
> (2) xxx xxx xxx
> (3) xxx xxx xxx
> (4) xxx xxx xxx"
>
> (emphasis supplied)
>
> 9. Even according to section 3 of the Adhiniyam of 1990 which is in respect of power to make restriction order, it is for preventing any person from acting prejudicial to the maintenance of the public order. Thus the sole purpose of the Adhiniyam of 1990 is to act timely and effectively to initiate preventive action against a wrongdoer, which object, in the considered opinion of this Court has been totally lost sight of while passing the impugned order. As is already observed that the show cause notice was issued on 11.6.2015, the reply was filed by the petitioner on 14.7.2015 and thereafter the final order was passed by the District Magistrate after recording the statements of various police personnel on 23.5.2017, whereas the District Magistrate ought to have proceeded with the matter expeditiously without affording any undue adjournments to either of the parties and passed the order within a reasonable time but the matter was kept pending for almost two years. In such circumstances, although no period of limitation is provided in the Adhiniyam, but still, the order should have been passed by the District Magistrate within a reasonable time frame. The order in itself was passed by the District Magistrate within a period of around two years and during this entire period the petitioner was roaming around freely and there is no allegation that during this period also he committed any offense, thus the application of the provisions of Adhiniyam appears to be totally redundant.
>
> 10. The District Magistrates, exercising their powers under the Adhiniyam must understand that it is not a mere formality which they have to perform before passing the order of externment under the Adhiniyam which directly affects a person's life and liberty guaranteed under Article 19(1)(d) of the Constitution of India. This court is of the opinion that in a way, the preventive detention is akin to the provisions of externment under

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the Adhiniyam for both these measures are preventive in nature and are enacted with a view to provide safe environment to the public at large. The only difference being that in case of preventive detention, the threat is imminent and serious whereas in case of externment, its degree is somewhat obtuse and mollified and is not as serious as it is in the case of preventive detention. The necessity to pass an order of preventive detention has been emphasized by the Apex Court in the case of **State of Maharashtra and others v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613** which is equally applicable to the cases of externment**.** The relevant paras of the same read as under:-

> ***"Preventive detention: Meaning and concept***
> **32.** There is no authoritative definition of "preventive detention" either in the Constitution or in any other statute. The expression, however, is used in contradistinction to the word "punitive".
> It is not a punitive or penal provision but is in the nature of preventive action or precautionary measure. The primary object of preventive detention is not to punish a person for having done something but to intercept him before he does it. To put it differently, it is not a penalty for past activities of an individual but is intended to pre-empt the person from indulging in future activities sought to be prohibited by a relevant law and with a view to preventing him from doing harm in future.
> **33.** In *Haradhan Saha* v. *State of W.B.* explaining the concept of preventive detention, the Constitution Bench of this Court, speaking through Ray, C.J. stated: (SCC p. 205, para 19)
> "*19*. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence.
> There is no parallel between prosecution in a court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent."
> **34.** In another leading decision in *Khudiram Das* v. *State of W.B.* this Court stated: (SCC pp. 90-91, para 8)
>> "*8*. … The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof.
>> Patanjali Sastri, C.J. pointed out in *State of Madras* v. *V.G. Row* that preventive detention is 'largely precautionary and based on suspicion' and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in *R.* v. *Halliday*, namely, that 'the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based'.
>> This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment.

> The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (*i*), (*ii*) and (*iii*) of Clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. …....."

35. Recently, in *Naresh Kumar Goyal* v. *Union of India* the Court said: (SCC p. 280, para 8)

> "*8.* It is trite law that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society.
>
> The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenu and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.
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> **Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped.** (See *P.U. Iqbal* v. *Union of India*, *Ashok Kumar* v. *Delhi Admn*. And *Bhawarlal Ganeshmalji* v. *State of T.N.*)""

(emphasis supplied)

11. Thus, testing the validity of the impugned order on the anvil of the principles so laid down by the Apex Court, it becomes manifestly clear that the order is flawed and cannot be sustained as there is an inordinate delay in passing the impugned order, which has led to loose its effectiveness."

11. Viewed, in the light of the aforesaid decision, in the present case, the recommendation by the Divisional Forest Officer itself was made after two years of one case registered against the petitioner and the order was passed after two years, two moths and thirteen days to be precise. On the other hand, it is also found that the reference of second criminal case in the impugned order for the first time, registered against the petitioner after two years of committing the first offence, without giving him any opportunity to rebut the same was also not appropriate on the

part of the District Magistrate, Burhanpur, which clearly runs against the principles of natural justice.

12. Resultantly, the petition stands **allowed,** the impugned orders are liable to be and are hereby set aside.

13. This court is also conscious of the fact that the impugned order has already come to an end by the efflux of time, but at least the petitioner should have the satisfaction that in future, the present externment proceedings shall not be taken into account as a circumstance while judging his credentials.

C. c. as per rules.

(SUBODH ABHYANKAR)
JUDGE

Pankaj