



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

WRIT PETITION NO. 9709 OF 2023 (GM-POLICE)

BETWEEN:

SRI. MALI RIZWAN,

...PETITIONER

(BY SRI. MOHAMMED MUJASSIM, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HOME
VIDHANA SOUDHA,
BANGALORE - 560 001.
2. THE ASSISTANT COMMISSIONER AND
SUB DIVISIONAL MAGISTRATE,
KUNDAPURA SUB DIVISION,
UDUPI DISTRICT - 576 101.
3. THE ASSISTANT COMMISSIONER OF POLICE,
KUNDAPURA SUB DIVISION,
KUNDAPURA TALUK - 576 101.





4. THE SUB INSPECTOR,
GANGOLI POLICE STATION,
GANGOLI VILLAGE,
KUNDPURA - 576 216.

...RESPONDENTS

(BY SRI. GOPALA KRISHNA SOODI, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER OF EXTERNMENT DATED 14.03.2023 IN CDS MAG CR.110/2021-22 VIDE ANNEX-A PASSED BY THE R-2 AS THE SAME IS NUL VOID. GRANT AN INTERIM ORDER TO STAY THE OPERATION OF ORDER OF EXTERNMENT DATED 14.03.2023 IN CDS MAG CR.110/2021-22 VIDE ANNEX-A PASSED BY THE R-2, TILL THE DISPOSAL OF THIS WRIT PETITION AND ETC.,

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

ORDER

The petitioner has challenged the Order dated 14.03.2023 at Annexure 'A' in CDS MAG CR.110/2021-22 passed by the learned Sub-divisional Magistrate, Kundapura Sub-division, Udupi District in externing the petitioner from the limits of Kundapura Sub-Division to Sagara Sub-Division for a period of 3 months from the date of impugned order.



2. Heard the arguments of Sri. Mohammed Mujassim, learned counsel for the petitioner and the learned Government Advocate and perused the records.

3. It is the contention of the learned counsel for the petitioner that the requisition made by the Sub-Inspector of Police, Gangoli Police Station dated 06.10.2021 (Annexure B) was the basis for initiating the proceedings against the petitioner. In the said requisition, the request was made for externing the petitioner for a period of six months from October 2021 till March 2022. Without applying the mind, the impugned Order came to be passed exterminating the petitioner for a period of three months i.e., from 14.03.2023, without any request. Such an Order under Annexure 'A' is in the background of the assembly election. The election is now over yesterday i.e., on 10.05.2023. Learned counsel for the petitioner prays for quashing of the impugned Order.

4. Per contra, the learned Government Advocate has contended that the petitioner has involved in as many as ten cases. His presence in the location is causing law and Order



problem and after subjective satisfaction only the learned Executive Magistrate has passed the Order vide Annexure 'A' which needs to be ratified which is supported by the impugned Order.

5. I gave my anxious consideration to the material on record. Annexure 'B' is the basis for the impugned order. It is pertinent to note that the request for exterminating the petitioner for a period of six months was from October 2021 to March 2022. The impugned order is for the externment of the petitioner for a period of three months from 14.03.2023. This shows without any request the learned Executive Magistrate has passed the impugned the Order. Even on perusal of the impugned order, it is very clear that out of ten cases have filed against the petitioner, six of them are ended in acquittal, in two cases, charge sheet is filed pending for enquiry, and one case is under investigation. Soon before passing the impugned order, there is no objective material placed for subjective satisfaction.

6. The Hon'ble Apex Court in the case of "**Deepak Vs. State of Maharashtra**" reported in **2022 SCC Online SC 99**,



held that personal liberty of a person under Article 19(1)(d) of the Constitution of India is affected in a case of this nature, hence the compliance of Section 56 of the Act is solicited, if the order lacks subjective satisfaction, test of reasonableness by the competent authority is *sine qua non* for passing a valid order of externment. At paragraph Nos.6, 13 and 15 it was held 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 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.

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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.

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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.

7. In the light of the above settled law, before passing an order of externment, the competent authority is require to comply the statutory requirements. The objective material relied is only the police report for subjective satisfaction. As observed above, non-compliance of Section 56 of the K.P. Act



1963 is imminent. The impugned order lacks subjective satisfaction and test of reasonableness. Hence, there are no reasons to sustain the impugned order. Therefore, petition deserves to be allowed. In the result, the following:

ORDER

- (i) The Writ petition is allowed in part.
- (ii) The impugned order dated 14.03.2023 passed by the 2nd respondent stands quashed.
- (iii) Matter is remanded back to the learned Executive Magistrate. The competent authority is at liberty to initiate fresh proceedings subject to compliance of the statutory requirements in the light of the dictum of the Hon'ble Apex Court in the case of ***Deepak Vs. State of Maharashtra*** referred supra.

**Sd/-
JUDGE**

SNC
List No.: 1 Sl No.: 78
CT: BHK