**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 139 OF 2022**

**[@ SLP(Crl.) No.9032 of 2021]**

**DEEPAK S/O LAXMAN DONGRE …… APPELLANT**

**v.**

**THE STATE OF MAHARASHTRA & ORS. …… RESPONDENTS**

**J U D G M E N T**

**ABHAY S. OKA, J.**

Leave granted.

**1.** The respondent No.2 by his order dated 15th December 2020 exercised the powers under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951 (for short "1951 Act"). By the said order, the appellant, who is a resident of Mandeolgaon, Taluka Badnapur, District Jalna was directed to remove himself outside the limits of District Jalna within 5 days. By the said order, he was externed from District Jalna for a period of two years from the date on which he removes himself from District Jalna. In the impugned order

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Reason:

of externment, the respondent No.2 relied upon 5 offences registered against the appellant, the details of which are as under: -

| S.No. | Police Station | Crime Register No. | Section | Status |
|---|---|---|---|---|
| 1. | Taluka Jalna | 367/2013 | 452, 324, 504 and 34 of IPC | Acquitted |
| 2. | Kadim Jalna | 247/2018 | 354, 354(a), 323, 504, 506, 509, 34 of IPC | Pending in the court of law |
| 3. | Chandanzira | 378/2018 | 307, 325, 323, 341, 201, 120(8), 405, 506, 507, 37 of IPC | Pending in the court of law |
| 4. | Badnapur | 15/2020 | 354, 354(a), 354(d), 509, 506 of IPC | Pending in the court of law |
| 5. | Badnapur | 215/2020 | 509, 501, 506 with 67, 67(a) of IT Act | Under Investigation |

In addition, the respondent No.2 relied upon confidential in-camera statements of witnesses ‘A’ and ‘B’. A statutory appeal was preferred by the appellant against the impugned order of externment dated 15th December 2020. The appeal was dismissed by the Appellate Authority. The appellant questioned the impugned order of externment by filing a writ petition under Article 226 of the Constitution of India before the Bombay High Court. A Division Bench of the Bombay High Court by the impugned Judgment and

order dated 20th August 2021 dismissed the writ petition. The impugned order of externment was passed on the ground that the confidential statements of witnesses 'A' and 'B' disclose that witnesses are not willing to come forward to give evidence against the appellant, the activities of the appellant are very dangerous and the offences registered against the appellant under the Indian Penal Code (for short "IPC") are of grave and serious nature which are causing disturbance to the public at large. It was further observed by the respondent No.2 that the confidential statements of two witnesses demonstrate that the appellant is indulging in illegal activities which are causing alarm, danger or harm to the public at large.

**2.** Shri Sandeep Sudhakar Deshmukh, the learned counsel appearing for the appellant has taken us through the impugned order of externment as well as the impugned Judgment and order of the Bombay High Court. His submission is that the act of passing the impugned order of externment was a *mala fide* act at the instance of Shri Narayan Kuche, a local Member of the Legislative Assembly (MLA) with the object of settling family disputes. It is pointed out by the learned counsel that the said MLA is a maternal uncle of the appellant. It is pointed out by the learned counsel that the said MLA tried to implicate the appellant in a false case (Crime No.15 of 2020) filed at his instance by one Varsha Bankar with Badnapur police station in Jalna District.

He submitted that the said Varsha Bankar admitted in her police statement that the brother of the said MLA advised her to make phone calls and send messages and photographs to the appellant. He submitted that after a First Information Report was registered against the said MLA, his brother and the said Varsha Bankar, on the basis of the appellant's complaint, a show-cause notice dated 7th July 2020 was issued by the respondent No.2 to the appellant calling upon him to show cause why an order of externment under Section 56 of 1951 Act should not be passed. The learned counsel pointed out that the in-camera statements of witnesses 'A' and 'B' are general in nature which do not refer to any specific allegation against the appellant. He submitted that out of the 5 offences relied upon in the impugned order of externment, one is of 2013 and two are of 2018. The fourth offence is of 2020 under Sections 354, 354A, 354D, 509 and 506 of the Indian Penal Code. The fifth offence is under Sections 509, 501, 506 read with Section 67 and 67(A) of the Information Technology Act, 2000. He submitted that the first three offences are stale offences and there is no live link between the said three offences and the object of passing the impugned order of externment. He submitted that the remaining two offences registered in the year 2020 will not attract clauses (a) or (b) of sub-section (1) of Section 56 of the 1951 Act. He would, therefore, submit that the impugned order of

externment is vitiated. He urged that the exercise of power is *mala fide* at the instance of the said MLA. He submitted that on the basis of the same offences, the appellant was arrested under Section 151 of the Code of Criminal Procedure, 1973 (for short "Cr.PC"). On 2nd June 2020, a proposal submitted by the police to detain the appellant under sub-section (3) of Section 151 of Cr.PC for a period of 15 days was rejected by the learned Judicial Magistrate, First Class and the appellant was ordered to be released. He submitted that on the same set of allegations, the impugned order of externment has been passed against the appellant. In the alternative, he submitted that under Section 58 of the 1951 Act, the maximum period for which a person can be externed is of two years. He submitted that in the impugned order of externment, no reasons have been assigned for externing the appellant for a maximum period of two years.

**3.** Shri Sachin Patil, the learned counsel appearing for the respondents urged that while passing the order of externment, the competent authority is not required to pass a reasoned order. The competent authority has recorded subjective satisfaction of the existence of the grounds provided in clauses (a) and (b) of sub-section (1) of Section 56 of the 1951 Act. He submitted that the scope of powers under sub-section (3) of Section 151 of Cr.PC is different from the scope of powers under Section 56 of the 1951

Act. He submitted that the High Court has in detail examined the grounds of challenge to the impugned order of externment and has rejected each and every ground. He submitted that no interference is called for with the impugned order of externment and the impugned order of the High Court.

**4.** 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.

**5.** 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 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 [(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)

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.

**6.** 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***[1] 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.

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1 (1973) 1 SCC 372

**7**. 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).

**8**. On 2nd 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 7th July 2020 on the basis of which the impugned order of externment was passed. The police arrested the appellant and produced him on 2nd June 2020 before the learned Judicial

Magistrate, First Class along with the aforesaid proposal. By the order dated 2nd 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 9th June 2020.

**9.** 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 7th July 2020. It is not the case made out in the show cause notice dated 7th July 2020 that after release of the appellant on 2nd June 2020, the appellant indulged in the commission of any offence or any other objectionable activity.

**10.** 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.

**11.** In the facts of the case, the non-application of mind is apparent on the face of the record as the order dated 2nd 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 2nd 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 sub-section (1) of Section 56 are not attracted.

**12.** 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.

**13.** 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".

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 15th 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.

**14.** Perusal of the impugned Judgment and order of the High Court shows that unfortunately, the Division Bench did not notice that an order of externment is not an ordinary measure and it must be resorted to sparingly and in extraordinary circumstances. It was the duty of the Constitutional

Court to test the said order within the parameters which are well-settled by this Court.

**15.** Accordingly, the appeal must succeed. The impugned order of externment dated 15th December 2020, as well as impugned Judgment and order dated 20th August 2021 of the High Court, are hereby quashed and set aside.

**16**. The appeal is allowed in the above terms. All the pending applications, if any, also stand disposed of.

**……J**
**(AJAY RASTOGI)**

**……J**
**(ABHAY S. OKA)**

New Delhi;
January 28, 2022.