



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.709 OF 2019

Gautam Shantilal Daima Petitioner
Versus
State of Maharashtra
and others Respondents

Mr. Vinayak R. Kumbhar, Advocate for the Petitioner.
Mr. M.G. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st JUNE, 2023

P.C. :

1. Rule. Rule is made returnable forthwith by consent of the parties.
2. The Petitioner has challenged the order dated 13.8.2018 passed by the Deputy Commissioner of Police, Zone-8, Mumbai as well as the notice dated 19.9.2018 issued by the Special Executive Magistrate, Kherwadi, Mumbai. This order was passed in the externment proceedings.

3. Heard Shri Vinayak Kumbhar, learned counsel for the Petitioner and Shri M.G. Patil, learned APP for the Respondent-State.

4. The Petitioner was served with the notice dated 1.3.2018 issued under Section 59 of the Maharashtra Police Act (for short, 'said Act') asking him to show cause as to why he should not be externed out of the limits of Mumbai City, Mumbai Suburban, Navi Mumbai and Thane Districts. The Petitioner participated in the enquiry and the Respondent No.2, who was the externing authority for the purpose of Section 56(1) of the said Act, passed an order observing that it was not necessary to extern the Petitioner under Section 56(1) of the said Act; instead the Senior Inspector of Police, Nirmal Nagar Police Station was directed to initiate the proceedings under Section 110 of the Code of Criminal Procedure, 1973. Pursuant to this order, the show cause notice dated 19.9.2018 was issued by the SEM, as mentioned earlier, under Section 110(g) of Cr. P.C.

5. Learned counsel for the Petitioner submitted that

the Respondent No.2 in his order dated 13.8.2018 had observed that the officers in the area had stated that the Petitioner's behaviour and conduct were good. The Respondent No.2 himself was satisfied that the externment order was not necessary and yet he directed the Senior Inspector of Police, Nirmal Nagar Police Station to initiate the proceedings under Section 110 of Cr.P.C.

6. Learned counsel for the Petitioner submitted that this course of action was not permissible under the said Act and the operative part of the said order was contrary to the subjective satisfaction reached by the Respondent No.2. He submitted that since that order itself is not sustainable, the subsequent show cause notice issued under Section 110(g) of Cr.P.C. is also not tenable in law.

7. Learned counsel for the Petitioner further submitted that after issuance of the show cause notice no further steps were taken and no bond was directed to be executed under Section 111 of Cr.P.C. as of today.

8. Learned APP, on the other hand, submitted that at this stage, only the notice under Section 110(g) of Cr.PC. is pending and because of pendency of this Petition no further steps were taken. The Petitioner cannot take advantage of pendency of this Petition which is filed by him.

9. I have considered these submissions. As far as the order dated 13.8.2018 is concerned, while recording the subjective satisfaction, the Respondent No.2 accepted the statement of the concerned Sub-Inspector of Police, Newase who was attached to Nirmal Nagar Police Station, that the Petitioner's behaviour and conduct were good. He was earning his livelihood by working as a driver. It was also recorded as a subjective satisfaction that, before this order, similar steps were taken for externment not too long ago and, therefore, it would not be proper to extern him. Having observed thus, the Respondent No.2 then instead of passing the order concerning the issue of externment, directed initiation of the proceedings under Section 110 of Cr.PC. Thus, his subjective satisfaction is quite different from his

operative part, which shows non-application of mind on his part. Besides this infirmity, in my opinion, the Respondent No.2 has clearly exceeded his jurisdiction in view of the provisions of Section 56(1) of the said Act. Once the proceedings were initiated by issuing process under Section 59 of the said Act, the only logical conclusion could be either issuance of externment order or dropping the proceedings. The operative part directing initiation of proceedings under Section 110 of Cr.P.C. is not contemplated under Section 56(1) of the said Act at all. Thus, the order dated 13.8.2018 is passed beyond the scope of the said Section and hence is not tenable.

10. As far as the notice dated 19.9.2018 under Section 110(g) of Cr.P.C. is concerned; it clearly was issued pursuant to the order dated 13.8.2018. Since that order itself is not sustainable, the consequent steps taken under the said order can also not survive in law. Therefore, even the notice dated 19.9.2018 is required to be set aside. Even otherwise, the notice was issued in the year 2018. There was no stay

operating for proceeding further. However, for more than four years, no steps were taken. Therefore, urgency and necessity of initiating these proceedings do not survive. On this count also the notice is required to be set aside. Consequently the Petition succeeds.

11. Hence, the following order:

:: O R D E R ::

- i. Rule is made absolute by setting aside the order dated 13.8.2018 passed by the Respondent No.2 and also by setting aside the notice dated 19.9.2018 issued by the Special Executive Magistrate, Kherwadi, Mumbai under Section 110(g) of the Code of Criminal Procedure in Case No.138/2018.
- ii. The Petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)