HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17179 / 2020
MAHMOOD S/O ALAUDDIN Vs. STATE OF MP

INDORE, Dated : 07/12/2020

Parties through their counsel.

The petitioner before this Court has filed this present writ petition being aggrieved by the Show Cause Notice dated 12/10/2020 issued under the provisions of the M. P. Rajya Suraksha Adhiniyam, 1990 stating that in the year 2009 a similar Show Cause Notice was issued on 25/3/2009 for initiating proceedings against the petitioner under the provisions of M. P. Rajya Suraksha Adhiniyam and after receiving the reply of the petitioner, the District Magistrate has arrived at a conclusion that no order is required to be passed in respect of externment of the petitioner.

Petitioner has further stated that he has filed two Writ Petitions against the Police Officers and other person with a grievance that nothing has been done in a criminal case and this Court by order dated 8/1/2016 passed in W.P.No. 6080/2015 has directed the Police Authorities to conclude the investigation within 90 days. The petitioner has filed one more Writ Petition ie., W.P.No. 3391/2016 against the Authorities and the petitioner's grievance is that the local police started harassing the petitioner and an order was passed in respect of his externment in the year 2018. The order of externment dated 27/12/2017 is on record (Annexure P/3).

The petitioner being aggrieved by the order of externment came up before this Court and this Court vide

order dated 8/3/2019 passed in W.P.No. 24287/2018 has quashed the order passed by the District Magistrate as well as the order passed in appeal by the learned Commissioner, meaning thereby, the order of externment was quashed by this Court.

Thereafter the petitioner filed a complaint before the Human Rights Commission and an order was passed under the National Security Act against the petitioner. The petitioner immediately preferred a Writ Petition ie., W.P.No. 4402/2020 and before the matter could be decided, the Advisory Board has held the detention to be bad in law. Grievance of the petitioner is that the respondents being frustrated by the order of the Advisory Board, have issued a Show Cause Notice dated 12/10/2020 for externment of the petitioner. The contention of the petitioner is that the impugned notice issued by the respondents is nothing but an attempt to harass and humiliate the petitioner and the action of the respondents is violative of Article 21 of the Constitution of India.

Learned counsel for the petitioner has argued before this Court that based upon old and stale cases, the Show Cause Notice has been issued and even this Court has quashed the order of externment which was based upon some old cases. The petitioner has stated that now same cases have been reflected in the Show Cause Notice and, therefore, the Show Cause Notice deserves to be quashed. It has also been

argued by the learned counsel for the petitioner that ingredients of Sec. 5(b) of the M. P. Rajya Suraksha Adhiniyam are not at all fulfilled and, therefore, the action of the respondents is bad in law. A prayer has been made for quashment of the Show Cause Notice.

Respondent – State has filed a reply and instead of submitting a detailed reply to the allegations levelled by the petitioner, only a preliminary reply has been filed and the averments made by the petitioner in the Writ Petition have not been dealt with. It has been vehemently argued that in the light of the judgment delivered by the apex Court in the case of Union of India and another Vs. Kunisetty Satyanarayana reported in **(2006) 12 SCC 28**, the petition is not maintainable as it is only against a Show Cause Notice. Reliance has also been placed upon the judgment delivered by this Court in the case of Sanjay Vs. Home Department **(W.P.No. 1547/2019, decided on 28/1/2019).**

Respondents have stated that the petitioner has recently committed an offence registered at Crime No. 456/2020 for offence u/S. 294, 506/34 of the Indian Penal Code and, therefore, keeping in view the current situation which has emerged on account of Covid-19 pandemic it became necessary to issue a Show Cause Notice to the petitioner. The respondents have prayed for dismissal of the Writ Petition.

A rejoinder has also been filed in the matter and the

petitioner has stated that the alternative remedy is not a bar and as the Show Cause Notice is an absurd Show Cause Notice, the Writ Petition is very much maintainable keeping in view the judgment delivered in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai reported in **AIR (SC) 1999-0-22.** Reliance has also been placed upon the judgment delivered in the case of Ramji Pandey Vs. State of Uttar Pradesh reported in **Cr.L.J. 1981-0-1083** as well as upon the judgment delivered in the case of Brahma Prakash Singh Vs. State of U.P. reported in **All.L.J. 2010-5-356**.

Heard learned counsel for the parties at length and perused the record. The matter is being disposed of with the consent of the parties at the admission stage itself.

The undisputed facts of the case reveal that a Show Cause Notice has been issued on 12/10/2020 to the petitioner by the District Magistrate in exercise of the powers conferred under the M. P. Rajya Suraksha Adhiniyam, 1990. As many as 23 cases are reflected in the aforesaid Show Cause Notice. Earlier also a similar Show Cause Notice was issued on 27/12/2017 and all the cases which were reflected in the Show Cause Notice dated 27/12/2017 are also now part of the Show Cause Notice dated 12/10/2010. The new case which has been registered against the petitioner is at Crime No. 456/2020 for offence u/S. 295, 506/34 of the Indian Penal Code. The earlier Show Cause Notice was subjected to judicial scrutiny and this Court has passed an order on

8/3/2019 setting aside the order of the District Magistrate dated 2/4/2018 and the order passed by the Divisional Commissioner dated 9/7/2018. The order dated 8/3/2019 passed in Writ Petition No. 24287/2018 reads as under:

Indore, dated : 08.03.2019

Petitioner by Shri Hitesh Sharma, Advocate.

Shri Arvind Sharma, learned Govt. Advocate for respondents/State.

With consent of learned counsel for the parties, heard finally.

O R D E R

The petitioner has filed the present petition being aggrieved by order of externment dated 2.4.2018 passed by District Magistrate, Dewas and order dated 9.7.2018 passed by Commissioner, Ujjain by which his appeal has been dismissed.

2. The petitioner is permanent resident of Dewas. The Superintendent of Police, Dewas sent a letter to the District Magistrate, Dewas for initiation of proceedings **u/s. 5(a)** and **(b)** of **M.P. Rajya Suraksha Adhiniyam, 1990** (hereinafter, for short, **"Act of 1990"**). A show-cause notice dated 27.12.2017 was issued to the petitioner as to why the proceedings of externment be not initiated against him. As per averments in show-cause notice, as many as 21 criminal cases have been registered against the petitioner from the year 1991 till 2017 under various Sections of the IPC and general public is feeling insecured to depose against him.

3. The petitioner submitted detailed reply to the show cause notice by submitting that earlier, vide order dated 7.7.2007 he was subjected to externment for a period of six months, which he challenged in Writ Petition No.2188/2009 before this Court and vide order dated 2.4.2009, the matter was remanded to the District Magistrate for deciding afresh. Thereafter, the proceedings were dropped. From 2009 to 2018, only four cases have been registered against him and he is living peacefully with his family. He has further submitted that in most of the cases, he has been acquitted.

4. By order dated 2.4.2018, the District Magistrate has passed the order of externment u/s. 5(b) of the Act of 1990 for a period of one year. Being aggrieved by the aforesaid order, the petitioner preferred an appeal to the

Commissioner and vide order dated 9.7.2018, his appeal has been dismissed, hence the present petition before this Court.

5. After notice, respondents have filed the return by submitting that the petitioner is history-sheeter and District Magistrate has recorded his substantive satisfaction on the report submitted by Superintendent of Police, Dewas. There is no improvement in the criminal activities of the petitioner. As many as 21 criminal cases have been registered against him, therefore, no interference is called for and the petition is liable to be dismissed.

6. Petitioner has filed rejoinder along with list of 21 criminal cases, in which, he has either been acquitted or quashed by this Court. Only four cases are pending and that too u/s. 323, 506, 341, 420, etc. of IPC.

7. Shri Hitesh Sharma, learned counsel for the petitioner, submits that due to political enmity and land dispute with the local persons, the petitioner and his brother both have been subjected to the order of externment by District Magistrate. In identical facts and circumstances against both of them, the order of externment were passed. Brother of the petitioner filed W.P. No.23930/2018 before this Court against the order of District Magistrate and Commissioner and vide order dated 7.1.2019 the coordinate Bench of this Court has quashed both the orders. In the present case also, the petitioner has been subjected to externment only on the basis of number of old criminal cases, but the District Magistrate did not apply his mind and did not record any satisfaction as required u/s. 5(b) of the Act of 1990.

8. On the other hand, Shri Pawan Sharma, learned Govt. Advocate for respondents/State, has argued in support of orders passed by District Magistrate and the Commissioner and prayed for dismissal of this petition.

9. It is apparent from the list of criminal cases registered against the petitioner that from the year 1991 to 2008, 13 criminal cases were registered and on the basis of said cases, he was earlier proceeded u/s. 5(a) & (b) of the Act of 1990, but the proceedings were ultimately dropped. From 2015 to 2017, only four cases have been registered against him and all the cases are pending before the Court registered under Crime Nos. 969/2015, 14/2016, 1131/2016 and 6/2017.

10. The Division Bench of this Court in the case of **Ashok Kumar Patel V/s. State of M.P. : 2009 (4) MPLJ 434** has

held that while passing the order u/s. 5(b) of the Act of 1990, the District Magistrate is required to record his satisfaction that the witnesses are not coming forward to depose against the person. Para 10 & 11 of the aforesaid judgment are reproduced below :

"**10.** The second condition which must be satisfied for passing of an order of exeternment against a person is that in the opinion of the District Magistrate, witnesses are not willing to come forward to give evidence in public against such person by a reason of apprehension on their part as regards safety of person or property. Construing a paramateria provision in Section 27 of the City of Bombay Police Act, 1902 in Gurbachan Singh V. The State of Bombay and *another (AIR 1952 SC 221)*, the Supreme Court observed :-

"The law is certainly an extraordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitute a menace to the safety or the public residing therein".

11. In the instant case, the District Magistrate has in the impugned order only baldly stated that the list of offences registered against the petitioner reflects that he is a daring habitual criminal and because of this there is fear and terror in the public and has not recorded any clear opinion on the basis of materials, that in his opinion witnesses are not willing to come forward to give evidence in public against such person by a reason of apprehension on their part as regards safety of their person or property. In most of the cases, Challans have been filed by the Police in Court obviously after examination of the witnesses under Section 161 of Cr.P.C. and the cases are pending in the Court. There is no reference in the order of District Magistrate that witnesses named in the Challans filed by the Police are not coming forward to give evidence against the petitioner in Court. Hence, in the absence of any existence of material to show that witnesses are not coming forward by a reason of apprehension to danger to their person or property to give evidence against the petitioner in respect of the alleged offences, an order under Section 5(b) of the Act of 1990 cannotbe passed by the District Magistrate by merely repeating the language of Section 5(b) of he Act of 1990."

In the present case, the District Magistrate has only taken into consideration the number of cases pending against the petitioner and he has only recorded findings that upon examining the material and the reply filed by the petitioner being unsatisfactory, order u/s. 5(b) of the Act of 1990 is liable to be passed. Likewise, the Commissioner has also while exercising the powers conferred u/s. 9 of the Act of 1990, did not record any satisfaction as required u/s. 5(b) of the Act of 1990.

11. In view of the foregoing discussion, this Court is of the considered opinion that this petition deserves to be and is

hereby allowed. The impugned orders dated 9.7.2018 passed by Divisional Commissioner, Ujjain so also the order passed by District Magistrate dated 2.4.2018 respectively are hereby quashed.

No order as to costs.

Another order was passed on 29/1/2020 by the District Magistrate in exercise of the powers conferred under the National Security Act, in respect of detention of the petitioner and based upon the recommendations of the Advisory Board, the detention order has been set aside by order dated 19/3/2020. Now, again a Show Cause Notice has been issued on 12/10/2020 directing the petitioner as to why an order of externment should not be passed under the M. P. Rajya Suraksha Adhiniyam, 1990.

The statutory provisions governing the field as contained u/S. 5 of the M. P. Rajya Suraksha Adhiniyam, 1990 reads as under :

5. Removal of persons about to commit offence.- Whenever it appears to the DistrictMagistrate- (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 reasonably 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 or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abatement of any such offence, and when in the opinion of the District Magistrate 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

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant;

> the District Magistrate may, by an order in writing duty served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant-
>
> (a) so as to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease; or
>
> (b) to remove himself outside the district or my part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route within such time as the District Magistrate may specify and not to enter or return to the said district or part thereof or such area and such contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself.

The aforesaid statutory provision of law does empower the State Government to issue a Show Cause Notice and after receiving a reply, to pass an appropriate order in accordance with law in respect of externment. The earlier order of externment which was based upon Show Cause Notice dated 27/12/2017 has been quashed by a coordinate Bench of this Court in W.P.No. 24287/2018. The order detaining the petitioner under the National Security Act dated 29/1/2020 has been set aside by the Advisory Board and now based upon same facts and circumstances which were subject matter of Show Cause Notice dated 27/12/2017, a fresh Show Cause Notice has been issued.

This Court is of the considered opinion that as the petitioner has been given a clean chit by this Court in the earlier round of litigation, the respondents with total non-application of mind and without taking into account the earlier orders passed in respect of the petitioner have issued a Show Cause Notice dated 12/10/2020. Normally this Court

would not have entertained the Writ Petition in the light of the judgment delivered by the apex Court in the case of Union of India Vs. Kunisetty Satyanarayana (supra), however, facts and circumstances of the present case are distinguishable. Repeated Show Cause Notices are being issued on the basis of same incidents, for the reasons best known to the Authorities, and the exercise of receiving a reply and passing a final order by the District Magistrate is going to be an empty formality, keeping in view the peculiar facts and circumstances of the case. The Show Cause Notice has been issued in a mechanical manner without taking into account the earlier orders passed by this Court from time to time and, therefore, this Court is of the considered opinion that the petitioner has been able to make out a case for interference at the Show Cause Notice stage itself. The Show Cause Notice has been issued on the same facts and allegations as made in earlier externment order dated 2/4/2018 which has been set aside and, therefore, the impugned Show Cause Notice, in the present case, deserves to be quashed and is accordingly hereby quashed.

No order as to costs.

Certified copy, as per Rules.

(S. C. SHARMA)
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