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LAWS(MPH)-2014-3-2

HIGH COURT OF MADHYA PRADESH (AT: INDORE)

Coram : S.R.WAGHMARE J.

Decided On : March 03,2014

Appeal Type : Writ Petition No.14222/2013

Appellants :

Pappu @ Pramod

Vs.

Respondents :

STATE OF MADHYA PRADESH

Advocates :

HITESH SHARMA,PRAMOD MEETHA

Cited Judgement :

VINOD DEVNARAYAN MEENA VS. STATE OF M P, [LAWS(MPH)-2016-5-113] [REFERRED TO]

JUDGMENT :

(1.) By this petition under Articles 226 & 227 of the Constitution of India, the petitioner Pappu @ Pramod Sahu has challenged the order dated 27.12.2013 (Annexure P/1) passed by Commissioner, Indore in case No.53/Appeal/RSA/2013.

(2.) Briefly stated the prosecution case is that the impugned order of externment dated 20.11.2013 was passed by Commissioner, Indore and that initially on 08.06.2011, the District Magistrate Barwani had issued show cause notice dated 08.06.2011 to the petitioner under Section 8(1) of the M.P. Rajya Suraksha Adhiniyam 1990 and the petitioner had filed reply to the same. The petitioner has stated that although there were cases listed against him, he had not been convicted in any of the cases and his track record is clean and the cases recorded were of the year 1992 to 1994; despite filing reply on 09.11.2011 after a period of two years the District Magistrate passed the impugned order dated 20.11.2013 externing the present petitioner. Being aggrieved the petitioner had filed writ petition No. 13582/2013 against the high handed action before the District Magistrate. The Court had directed that petitioner had alternative remedy on filing the appeal under Section 5 of Rajya Suraksha Adhiniyam before the Commissioner. The petitioner, therefore, filed a appeal before the commissioner and by the impugned order the commissioner has upheld the order of externment passed by the District Magistrate and hence the present petition.

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(3.) Counsel for the petitioner has vehemently urged the fact that the cases recorded against the petitioner were very old almost 21 years old and basically the petitioner is an agriculturist and there is nobody else to cultivate his land and his family would be driven to penury. Besides he is an income tax payee and one of his son is suffering from eye disorder which requires periodic treatment. Counsel urged that he had filed the record of the Khasra entries which indicated his ownership on the agricultural land his pan card and medical documents correctly as per Annexure P/6. He has also complained to the Human Rights Commission and Superintendent of Police, Barwani regarding the fact that he has been already acquitted from the cases registered against him. In the year 2011 he also produced witnesses from his locality, who have stated before the District Magistrate that only a single case is registered against him and he is a peace loving citizen. Similarly one single criminal case is pending for offence under Sections 406 & 420 of the IPC before the JMFC, Khargone at case No.504/08 and this case also pertains to the year 1992 and in the all other cases he has been acquitted for offence listed against him; despite having such documentary evidence, in his favour, the District Magistrate as well as the Divisional Commissioner, Indore failed to take them into consideration and have passed the externment order without application of mind Counsel prayed that the same be set aside. To bolster his submissions, Counsel relied on Ashok Kumar Patel v/s. State of M.P. and others, 2009 4 MPLJ 434, whereby the Division Bench of this Court held that "unless the conditions mentioned under Section 5(b) of the M.P. Rajya Suraksha Adhiniyam 1990 are strictly satisfied, an order of externment, will have to be quashed by the Court. The two conditions, for passing an order of externment against a person, to be satisfied are:-

(i) There are reasonable grounds for believing that a person is engaged or is about to be engaged in 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 or in the abetment of any such offence; and

(ii) 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.

The Court had considered the fact that the record of the accused was of a daring habitual criminal and because of this there is fear and terror in the public and he 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. 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 cannot be issued by the District Magistrate by merely repeating the language of Section 5 (b) of the Act of 1990. The two conditions for an order for externment as stated in Section 5 (b) of the Act of 1990 do not exist in this case and the order passed by the District Magistrate and the appellate order of the

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Commissioner are liable to be quashed."

PANDHARINATH SHRIDHAR RANGNEKAR v. DY COMMISSIONER OF POLICE, STATE OF MAHARASHTRA, 1973 AIR(SC) 630 STATE OF MAHARASHTRA v. SALEM HASAN KHAN, 1989 AIR(SC) 1304 and STATE OF N C T OF DELHI v. SANJEEV @ BITTOO, 2005 AIR(SC) 2080 Rel (Paras 6, 9, 11, 13 and 14). Counsel relied on Shaikh Saleem v/s. Principal Controller of Defence W.P. No.7019/2011, Counsel submitted that the case of the accused he was indulged in the criminal activities which was not conducive to peace and and there is always apprehension of breach of peace and public order. The Court held that the conditions precedent was that the District Magistrate should not pass the order only on the implication of an offence but the fact should also be considered whether there was likelihood of breach of peace and security in keeping with provisions of Section 5 of Adhiniyam 1990. The District Magistrate has basically relied upon the incident which took place on 10-11.07.2010 at village Mundwara and has recorded his satisfaction that there is a real likelihood of the petitioner having engaged in the commission of an offence involve force of violence. The said opinion formulated by the District Magistrate is conclusive in nature whereas offence registered in respect of the same incident is still pending adjudication and is not borne out from the record that any charges in respect of offence registered against the petitioner has been framed. Thus the reasonable ground does not exist as would lead the District Magistrate to draw an inference as per clause (b) of Section 5 of the Adhiniyam, 1990. In view whereof the externment deserves to be and is hereby quashed.

Finally Counsel relied on Kala s/o Khan Sahib v/s. State of M.P. and another, 2004 4 MPLJ 234, to state that conditions precedent is that the opinion has to be formed by the District Magistrate as "witnesses are not willing" to come forward to give evidence and proceed against such person by reason of apprehension of their part as regard to safety of their 'persons or property'. In order, Addl, District Magistrate has mentioned that the persons are not lodging report and have the apprehension of safety of giving evidence against petitioner in the Court. But, the name of even single witness who has given threat or who has apprehension of appearing in the Court due to fear of the petitioner has not been referred to in the order. Thus, satisfaction which has been recorded under Section 5 (b) by the Additional District Magistrate lacks objective consideration of the matter and has no legs to stand. Therefore, the order of externment of petitioner on Section 5(b) is liable to be quashed as essential ingredient to attract same does not exist in the instant case.

He relied on Naresh Bilawar v/s. State of M. P.,2009 ILR(MP) 2173 to state that our own Court has also held that even if case is registered against the accused and no action was taken with that such cases could not have formed the basis for passing the impugned order of externment and, therefore, it is found that there was no material before the District Magistrate which could satisfy the conditions mentioned in Section 5 of the State Security Act. The Court had also set aside the order of externment.

(4.) Counsel for the respondent/State has vehemently opposed the submissions of the Counsel for the

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petitioner and fully supported the impugned order of externment passed by Commissioner Division Indore with satisfaction of District Magistrate recorded under Section 3 of Rajya Suraksha Adhiniyam. Moreover Counsel urged that the satisfaction was subjective in nature and is not justiciable; and District Magistrate has rightly passed the order under Section 5(b) of M.P. Rajya Suraksha Adhiniyam in exercise of power conferred on him. Besides the appellate forum also dismissed the appeal of the petitioner under Section 9 of the Act. Counsel submitted that petitioner had ample opportunity to represent his case and the criminal record of the petitioner has been considered by the District Magistrate. The Superintendent of Police, Barwani has also sent his recommendation for externment of the petitioner. After considering the criminal activities and the report of the Superintendent of Police, the District Magistrate found the presence of the petitioner was prejudicial to the security of the area and he has rightly passed the impugned order dated 20.11.2013. The appellate authority has also dismissed the appeal filed by the petitioner and there is no doubt under the law that the activities of the petitioner can affect the peace and security of public at large. Counsel submitted that the District Magistrate as well as the Commissioner, Indore have considered the detailed reply filed by the petitioner wherein petitioner has clearly mentioned that he has not been convicted in any of the mentioned cases and all the cases were disposed off in the favour of petitioner and the petitioner was acquitted in all the cases except one which is pending before the JMFC, Khargone and that case No.504/08 is of 1992 and was registered under Section 406, 420 of the IPC and whether the nature of the said case pending before the Khargone Court is not concerned with the general public and it also endangered public peace. Counsel relied on the judgment of our Court in the matter of Baboo Khan vs. State of M. P. and another, 2004 1 MPHT 165], whereby the Court found that the petitioner was consistently found indulging in several heinous and serious criminal offences punishable under the IPC right from the year 1991 till 2002 and continuous involvement of the petitioner in criminal offences found to be material and decisive while passing the externment order by the District Magistrate. The Court further held that "it is a clear case of continuous commission of offence by the petitioner every year from the year 1991 onwards. No jurisdictional issue involved and no error of law in passing the externment order, petition is dismissed". Counsel for the State, therefore, prayed for dismissal of the present petition also.

(5.) On considering the above submissions and the impugned order and record, I find that it is essential to consider Annexure R-2 filed by respondent/State, it is the report of Superintendent of Police indicating the record of the accused. The Superintendent of Police has relied the cases since the year 1991 by the police station Anjad for offence under Sections 341, 323, 34 of the IPC registered at Crime No.123/91. Next he is considered the offence in the year 1992 registered by the same police station Anjad for offence u/S.467 & 471 at crime No.61/92, in which there was conviction for one year and the other case is also of the year 1992 for the same offences. In the year 1994 the case was registered at crime No.160/94 again the same police station Anjad was only for disrupting the peace and quarreling with the complainant, another offence in the year 1994 pertains to the chakka jam (creating the traffic jam of political ground). In the year 1995 offence was registered for hurling abuses to the complainant and causing marpit. In the year 1999 the offence was registered for offence u/s.457

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of the IPC at crime No.118/09 by the same police station. In the year 1999 again crime has been registered for offence under Section 379 of IPC at crime No.241/99. In the year 2006 again there is a case of marpit and offence was registered u/Ss.294, 323,341, 506, 325, 34 of the IPC. In the year 2007 case was registered for threatening under Sections 365, 294, 506 34 of the IPC. In the year 2008 offence was registered under Sections 279 & 337 of the IPC at crime No.176/2008. In the year 2011 offence was registered at Rojnamcha No.390/10.05.2011 pertains to quarreling similarly offering threatening was another crime was registered at No.492/13.05.2011 by the police station Anjad. Finally, the case for offence u/S.467, 406, 420 of the IPC at crime No.504/08 pending before the JMFC-Khargone. In view of the above, I find that undoubtedly the petitioner is an anti social element; indulging anti social activities. However as Counsel for the petitioner had submitted that the petitioner has been acquitted from most of the cases and stated that the District Magistrate has failed to come conscious decision that the presence of the accused was prejudicial of the peace or the fact that there was a reason to believe that the petitioner was engaged or likely to be engaged in the commission of offence involved in force or violation is required under Section 5(b) of M.P. Suraksha Adhiniyam.

On perusal of the impugned order dated 27.12.2013 passed by Commissioner Indore, I find that the Commissioner has considered the fact that out of the 11 criminal cases recorded against the petitioner, he has been acquitted from seven of them, there is conviction in two cases and one matter has been compromised and only one case is pending against the petitioner; despite which Commissioner has turned around and given an adverse opinion against the petitioner that "since all these criminal cases were recorded against him; they are indicative of the fact that the petitioner is a hardened and habitual criminal." However such a finding would be erroneous under the circumstances, moreso in view of the acquittals in the eleven cases as stated above and therefore, placing reliance on Ashok Kumar Patel , I find that conditions under S.5(b) of the M.P. Rajya Suraksha Adhiniyam 1990 are not satisfied and the District Magistrate and the impugned order by the Commissioner only listed the offences registered against the accused petitioner but there is no finding that on the basis of material there exists such conditions for passing of the order an externment as required u/S.5(b) of the Act 1990. The Court had aptly cautioned in the said case as follows : it is, therefore, not to be lost sight of, that the externment order makes a serious inroad on personal liberty of an individual and such restraints can be suffered only in the larger interests of society and care must be taken to ensure that the terms and conditions as required under Section 5(b) of the M.P. Rajya Suraksha Adhiniyam 1990 are strictly complied with and the safeguards are made available to the proposed externee.

(6.) Thus both the subjective satisfaction of District Magistrate and finding of the Commissioner are both based on erroneous assumptions and surmises. Hence the order of externment needs to be set aside since personal liberty of the petitioner is at stake, both the orders are therefore, set aside. The petitioner shall be set at liberty to enter the districts from where he had been externed and to lead his normal life. The petition is allowed. No order as to costs.

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