

Pandharinath Shridhar Rangnekar

Vs

Dy. Commr. of Police, The State of Maharashtra

Criminal Appeal No. 14 of 1972

(Y. V. Chandrachud, H. R. Khanna JJ)

11.12.1972

JUDGMENT

CHANDRACHUD, J. -

1. This appeal by special leave is directed against the judgment, dated August 11, 1971, of the High Court at Bombay, dismissing the petition filed by the appellant under Article 226 and 227 of the Constitution to challenge an order of externment passed by the first respondent.
2. On October 9, 1969, a notice of even date was served on the appellant under Section 59 of the Bombay Police Act 22 of 1951, asking him to appear before the Assistant Commissioner of Police 'M' Division, Bombay, in answer to the allegations contained in the notice. Briefly, the allegations were that the appellant's acts and movements were causing harm, alarm and danger to the residents of certain localities within the jurisdiction of Vile Parle Police Station, that he was given to assaulting the residents of those localities either because they were suspected to be police informants or because they failed to accede to the demands of money, that he had committed robberies in the particular localities, that since March 1969, he had committed several acts of the above description and that witnesses were not willing to come forward to depose against him in public. The appellant appeared before the Assistant Commissioner of Police, offered his explanation and examined 16 witnesses to refute the allegations. He contended that the allegation was vague and general, that they were made at the instance of one Damayanti Deshpande who was inimical to him, that he was a social worker of some standing, that he was a member of the Congress Party and that in two criminal cases which were filed against him he was acquitted in spite of the evidence led by the prosecution.
3. Later, the appellant was heard by Shri G. M. Nadkarni, Deputy Commissioner of Police, Zone-IV, Greater Bombay. On a consideration of the explanation and the evidence tendered by the appellant, the Dy. Commissioner passed an order, dated July 23, 1970, under Section 59 of the Act, externing him from the limits of Greater Bombay and the District of Thana, for a period of two years. The order of externment was directed to take effect within two days of the decision of two criminal cases which were then pending against the appellant and in case he was sentenced in the aforesaid cases to a term of imprisonment, the order was to take effect within two days from the date of his release from jail. Against that order, the appellant filed an appeal under Section 60 of the Act, to the second respondent, the Government of Maharashtra, but that appeal was dismissed on May 20, 1971, save with the modification that the externment was to be effective from May 31, 1971.
4. The appellant then filed a petition in the Bombay High Court under Article 226 and 227 of the Constitution to challenge the order of externment. Two contentions were made in the High Court on

behalf of the appellant : one, that the allegations contained in the show-cause notice were too vague to afford him a reasonable opportunity to defend himself and two, that his activities were at best confined to specific localities within the jurisdiction of the Vile Parle Police Station and therefore the order asking him to remove himself from the limits of the Districts of Greater Bombay and Thana was excessive and unreasonable. On the first contention, reliance was placed by the appellant on judgment, dated April 29, 1971, of a Division Bench of the Bombay High Court in Criminal Application No. 332 of 1971, in which a similar notice was struck down on the ground of vagueness. The learned Judges declined to follow that judgment as, in their opinion, it was inconsistent with the view taken by this Court in *State of Gujarat and Another v. Mehboob Khan Usman Khan etc.* ((1968) 3 SCR 746 : AIR 1968 SC 1468 : (1969) 1 SCJ 195) On the second contention, distinguishing the judgment of a Division Bench of the High Court in *Balu Shivling Dombe v. The Divisional Magistrate Pandharpur*, (71 Bom LR 79) and following a judgment, dated March 17, 1968, of another Division Bench in Criminal Application No. 1427 of 1968, the learned Judges held that in the circumstances of the case it was reasonable to extern the appellant from the limits of Greater Bombay as also of the Thana District. The correctness of this view is under challenge before us.

5. Learned counsel appearing on behalf of the appellant has raised the following point :

- (i) The allegation that witnesses were not willing to come forward to depose against the appellant in public is falsified by the very record of the present proceedings.
- (ii) The particulars contained in the notice issued under Section 59 of the Act are so vague that the appellant could not possibly meet the allegations made against him and thus he was denied reasonable opportunity to defend himself.
- (iii) The externing authority must pass a reasoned order or else the right of appeal would become illusory.
- (iv) The State Government also ought to have given reason in support of the order dismissing the appeal. Its failure to state reasons shows non-application of mind; and
- (v) The order of externment imposes unreasonable restrictions on the persons liberty of the appellant in that, whereas his activities are alleged to be restricted to an area within the jurisdiction of the Vile Parle Police Station, the order of externment not only extends to the whole District of Greater Bombay but to the District of Thana also.

6. Regarding the first point, it is urged that in Criminal Cases Nos. 2106/P of 1969 and 2337/P of 1969 which were filed against the appellant in the court of the learned Presidency Magistrate, 22nd Court, Andheri, Bombay, five witnesses were examined by the prosecution in each case thereby falsifying the assertion that witnesses were not willing to come forward to depose against the appellant in public. We cannot accept this contention. No connection is shown to exist between the two particular criminal cases and the incidents referred to in the externment order. Counsel attempted to establish that connection by saying that Damayanti Deshpande who was inimical to the appellant was the motive force behind the prosecutions as well as the externment proceedings. But the affidavit of the Deputy Commissioner has specifically denied that allegation. Besides, as held by this court in *Bhagubabhai Dullabhai Bhandari v. The District Magistrate, Thana and Others* (1956 SCR 533 : AIR 1956 SC 585 : 1956 SCJ 565) though, in order to attract the operation of Section 56

of the Act, the Officer concerned has to satisfy himself that witnesses are not willing to come forward to give evidence in public, it is not necessary that all the witnesses must be found thus unwilling to give evidence. The circumstance therefore that in the two criminal cases certain witnesses came forward to depose against the appellant in public cannot falsify the assertion that witnesses were unwilling to give evidence against the appellant in public.

7. On the second point, it is necessary to call attention to the notice issued to the appellant, which was in these terms :

#"NOTICE UNDER SECTION 59 OF THE BOMBAY POLICE ACT, 1961Name, address and age : Shri Pandharinath Shridhar Rangnekar, Hindu, 28 years, Res. Rama Niwas, Nariman Road, Vile Parle (East), Bombay-57.##

Under Section 58 of the Bombay Police Act, 1951 (Bom Act XXII of 1951) you are hereby informed that the following allegations are made against you in proceedings against you under Section 56 of the said Act.

In order to give you opportunity of tendering your explanation regarding the said allegations, I have appointed 9 a.m. On October 16, 1969, to receive your explanation and to hear you and your witness, if any, in regard to the said allegations. I, Shri H. S. Joshi, Assistant Commissioner of Police 'M' Division, Bombay, therefore require you to appear before me at Vile Parle Police Station on the said date viz., October 16, 1969, at 9 a.m. for the said purpose and to pass a bond in the sum of Rs. 500/- for your attendance during the enquiry of the said proceedings. Should you fail to appear before me and to pass the bond as directed above, I shall proceed with the enquiry in your absence.

Take note.

Allegations :

(1) Since March 1969, in the localities of Nehru Road, Azad Road Monghibai Road, Mahatma Gandhi Road, Ram Mandir Road and the areas adjoining thereto in the jurisdiction of Vile Parle Police Station, Greater Bombay your acts and movements are causing harm, alarm and danger to the residents of the aforesaid localities and areas in that.

(2) That you assault the residents of the aforesaid localities and areas either suspecting them of giving information to the police about your illegal activities or because they fail to accede to your demand of money which offences are punishable under Chapter XVI of the Indian Penal Code.

(3) That you commit robberies by extorting money and article from the residents of the aforesaid localities and areas by means of assault and/or under threats of assault which are offences punishable under Chapter XVII of the Indian Penal Code.

(4) That since March 1969, you have committed several acts of the matter described in Paras 1, 2 and 3 above.

(5) That the witnesses to your above described acts and movements are not willing to come forward and depose against you in public by reason of apprehension on their

part as regards the safety of their persons in that they apprehend danger to the safety of their person or property, if they do so.

(Sd.) H. S. Joshi, 9-10-1969 Assistant Commissioner of Police 'M' Division, Bandra, Bombay."##

8. Section 56 of the Act provides, to the extent material, that whenever it shall appear in Greater Bombay to the Commissioner : (a) that the movements of acts of any person are causing or are 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, 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 regard the safety of their person or property, the said officer may by order in writing direct such person to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts or any part thereof contiguous thereto, within such time as the said officer may prescribe and not to enter or return to the said area from which he was directed the remove himself. Under Section 58, and order externment passed under Section 56 can in no case exceed a period of two years from the date on which it was made. The relevant part of Section 59(1) provides that before an order under Section 56 is passed against any person, the officer shall inform that person in writing "of the general nature of the material allegations against him" and give him a reasonable opportunity of tendering an explanation regarding those allegations. The proposed externee is entitled to lead evidence unless the authority takes the view that the application for examination of witnesses is made for the purpose of vexation or delay. Section 59 also confers on the person concerned a right to file a written statement and to appear through an advocate or attorney.

9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (a) or (b) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regard the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their persons or property are unwilling to depose in public. There is a brand of lawless element in society which is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee "of the general nature of the material allegations against him". That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.

10. It is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in *Gurbachan Singh v. The State of Bombay and Another* (1952 SCR 737 : AIR 1952 SC : 221 : 1952 SCJ 279) had upheld the

validity of Section 27(1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the challenge to the constitutionality of Section 56 was repelled in *Bhagubhai v. Dullabhabhai Bhandari v. The District Magistrate, Thana and Others* (supra). We will only add that care must be taken to ensure that the terms of Section 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee.

11. In *Hari Khemu Gawali v. The Deputy Commissioner of Police, Bombay and Another*, (1956 SCR 506 : AIR 1956 SC 559 : 1956 SCJ 599) in which an order of externment was passed under Section 57 of the Act, it was held by this court on an examination of the general scheme of the Act that the provisions of Section 55, 56, 57 and 59 cannot be held to be invalid on the grounds that only the general nature of the material allegations is required to be disclosed to the externee, and that it would be difficult for him to get the matter judicially examined. Sinha J., speaking for the majority, observed :

"The grounds available to an externee had necessarily to be very limited in their scope because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, under Section 107 or Section 110. But the special provisions now under examination proceed on the basis that the person dealt with under any of the Section 55, 56 or 57 is of such a character as not to permit the ordinary laws of the land being put in motion in the ordinary way, namely, of examining witnesses in open court who should be cross-examined by the party against whom they were deposing. The provisions we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with under the preventive sections of the Code of Criminal Procedure."

12. In *State of Gujarat and Another, etc. v. Mehboob Khan Usman Khan etc.* (supra), this court, reversing the judgment of the High Court of Gujarat, rejected the argument that a notice substantially similar to the one in the instant case was bad for vagueness. It was held that the person proposed to be externed was entitled to be informed of the general nature of the material allegations and not to the particulars of those allegations. As to the meaning of the phrase "general nature of the material allegation", it was observed :

"Without attempting to be exhaustive we may state that when a person is stated to be a 'thief' that allegation is vague. Again, when it is said that 'A' stole a watch from X on a particular day and at a particular place', the allegation can be said to be particular. Again, when it is stated that 'X' is seen at crowded bus stands and he picks pockets' it is of a general nature of a material allegation. Under the last illustration, given above, will come the allegations, which, according to the Gujarat High Court, suffer from being too general, or vague. Considering it from the point of view of the party against whom an order of externment is proposed to be passed, it must be emphasised that when he has tender an explanation to a notice under Section 59, he can only give an explanation, which can be of a general nature. It may be open to him to take a defence, of the action being taken, due to mala fides, malice or mistaken identity, or he may be able to tender proof of his general good conduct, or alibi, during the period covered by the notice and the like."

13. We must therefore reject the argument that the particulars contained in the notice are vague. We

endorse the view of the High Court that Criminal Application No. 332 of 1971 in which judgment was delivered on April 29, 1971, by another Division Bench of that court was not correctly decided, to the extent to which the notice therein was held to be vague. The view taken in that case is inconsistent with the view expressed by this court in Mehboob Khan's case (supra).

14. The third and fourth point have the same answer as the second point just dealt with by us. Precisely for the reasons for which the proposed externee is only entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment. If those authorities were to discuss the evidence in the case, it would be easy to fix the identity of witnesses who are unwilling to dispose in public against the proposed externee externess. A reasoned order containing a discussion of the evidence led against the externee would probably spark off another round of tyranny and harassment.

15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subserve its real purpose. How long, within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is able to collect in the externment proceedings. There are cases and cases and therefore no general formulation can be made that the order externment must always be restricted to the area to which the illegal activities of the externee extend. A larger area may conceivably have to be comprised within the externment order so as to isolate the externee from his moorings.

16. An excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. The decision of the Bombay High Court in *Balu Shivling Dombé v. The Divisional Magistrate, Pandharpur* (supra), is an instance in point where an externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as districts of Sholapur, Satara and Poona. These areas are far widely removed from the locality in which the externee had committed but two supposedly illegal acts. The exercise of the power was therefore arbitrary and excessive, the order having been passed without reference to the purpose of the externment.

17. But *Balu Shivling's* case (supra), furnishes no analogy in the instant matter. A vast city like Bombay presents its own peculiar problems of law and order. It has an over-growing industrial complex and the city has spread its arms far and wide. A fair proportion of its teeming population is mobile, with large multitudes streaming in and out of the city in the pursuit of their daily avocations. An order of externment restricted to the particular areas chosen by the externee for his unlawful activities and to a small periphery thereof would in such circumstances fail of its true purpose. It would be impossible to secure obedience to such an order and its enforcement would raise practical problems which would impair the efficacy of the order. An order in the instant case if restricted, say, to the areas within the jurisdiction of the Vile Parle Police Station and its periphery would not serve its purpose. Rather than solving a problem of law and order, it would create yet one more.

18. That is why, on similar facts, the Bombay High Court has consistently repelled challenges made to externment orders on the ground that they extended not only to the district of Greater Bombay but

to the district of Thana as well. In Criminal Application No. 1427 of 1968 of a Division Bench (Kotval, C.J., and Kamat, J.) observed in their judgment of March 17, 1968 :

"In the present case the area of activity of the externee was undoubtedly stated to be Santacruz, but Santacruz is a fairly wide area. Moreover, it is very intimately connected with the surrounding area of Thana district. It is common knowledge that Thana town in the surrounding area is also an area where large industries have grown contiguous with the industrial area of Greater Bombay and that the entire industrial area is connected together by several means of communication including suburban trains of which there are several during each day, by taxis plying to and from Greater Bombay and bus services operating between Greater Bombay and several parts of Thana District. Therefore, the Police could reasonably have thought that it would not be sufficient to ask the petitioner to keep off only from the area of Greater Bombay which has an equally busy and highly industrialised area contiguous to it. Therefore, the order was extended to Thana District."

19. A similar view was taken by Palekar and Gatne, JJ., in Criminal Applications 30 and 93 of 1970, decided on February 23, 1970 by, Tulzapurkar, J., in 73 Bombay Law Reporter 442 at pp. 453-454 and by Bhasme and Kania, JJ., in Criminal Application No. 149 of 1972, decided on March 3, 1972. As against the judgment last mentioned the externee had filed special leave Petition No. 487 of 1972 in this court, one of the grounds stated therein being that the externment order was void because the externee was asked to remove himself not only out of the district of Greater Bombay but from the limits of Thana District as well. The petition was dismissed by this Court (Palekar and Dwivedi, JJ.) on September 20, 1972.

20. These judgments of the Bombay High Court have taken the view that the district of Greater Bombay and Thana form, so to say, a single unit. Palekar, J., observes in his judgment in Criminal Applications Nos. 30 and 93 of 197 : "It may be that the area of operation may be in a particular locality, but if the externment is limited only to that area, then it might be impossible to prevent the externee from visiting that area every day. Any part in Bombay is easily connected by transport with any other part of Greater Bombay and also the Thana District, and if, for example, an externee is externed outside the limits of Greater Bombay, then he should not take more than 15 minutes to reach Kurla from a place like Thana if the latter is excluded from externment. The very object of externment is to make it as difficult as possible to the externee to return to the field of his activities." Tulzapurkar, J., expressed the same view by saying that "the contiguous area of Thana District is intimately connected with the industrial area of Greater Bombay with cheaper and quicker means of transport and communication." According to Bhasme, J., who delivered the judgment of the Bench in Criminal Application No. 149 of 1972, "By reason of the means of communication and proximity, the districts of Greater Bombay and Thana are for all practical purposes one local area or one district." Deshmukh, J., in the judgment under appeal, says that "Greater Bombay and Thana District are intimately connected by several communications". In matters of local colour and conditions the view so consistently expressed by the learned Judges of the High Court must, in our opinion, be accepted as correct.

21. In the result the appeal fails and is dismissed.

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