

State of Maharashtra and Another

Vs

Salem Hasan Khan

Criminal Appeal No. 205 of 1989

(L. M. Sharma, S. R. Pandian JJ)

09.03.1989

JUDGMENT

1. Special leave granted.

2. The respondent was served with an externment order passed under Section 56 of the Bombay Police Act (hereinafter referred to as 'the Act') directing him to leave the districts of Aurangabad and Jalna for a period of two years. The order stated that from May 11, 1980 the respondent was found to be frequently engaged in illegal business of narcotics and since he was involved in several cases of riot and criminal intimidation causing physical hurts to the residents of the locality on account of his suspicion that they were supplying information to the police about his illegal activities, witnesses were not willing to come forward and depose against him. He filed an appeal under Section 60 of the Act and while the appeal was pending he moved the Bombay High Court with a writ application under Article 226 of the Constitution. During the pendency of the writ application the State Government dismissed the respondent's appeal by a short order. The writ petitioner thereafter challenged the appellate order also in the pending writ case.

3. At the time of the final hearing of the writ case before the High Court, four points were raised on behalf of the petitioner. As the first point, it was urged that since the State Government omitted to give reasons in support of the order of dismissal of the appeal, the same was vitiated in law. The High Court agreed with the petitioner and allowed the writ application quashing the appellate order as well as the initial externment order on this ground alone without going to the other questions. The State Government has challenged the High Court judgment in the present appeal.

4. On behalf of the appellant reliance has been placed on the decision of this Court in *Pandharinath Shridhar Rangnekar v. Deputy Commissioner of Police* ((1973) 1 SCC 372 : 1973 SCC (Cri) 341 : (1973) 3 SCR 63), wherein a similar plea was taken by the appellant before this Court. It was contended that the failure on the part of the State Government indicated non-application of mind. The appellant had also urged that the allegations contained in the show cause notice were too vague in absence of details to afford him reasonable opportunity to defend himself. Rejecting the argument, this Court held that a full and complete disclosure of particulars, as is requisite in an open prosecution, will frustrate the very purpose of an externment proceeding. There is a brand of lawless elements in society which it 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 and reprisal witnesses are unwilling to depose in public. While dealing with the contention that the State Government was under a duty to give reasons in support of its order dismissing the appeal, the point was rejected in the following terms : (SCC p. 378, para 14)

Precisely for the reason for which the proposed externee is only entitled to be informed to the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to writ a reasoned order in the nature of a judgment.

As observed, if the authorities were to discuss the evidence in the case, it would be easy to fix the identity of the witnesses who were unwilling to depose in public against the proposed externee. A reasoned order containing a discussion would probably spark off another round of harassment. We are, therefore, of the view that the High Court was in error in quashing the order as confirmed by the State Government in appeal.

5. The externment order was made several years back and the learned counsel for the appellant rightly stated that although the impugned order need not be revived now, it was necessary to correct the error in the High Court's judgment as it is likely to prejudice other similar cases. Accordingly in the circumstances we set aside the impugned judgment but make it clear that the externment order shall not be enforced against the respondent any further. The appeal accordingly allowed to this extent.

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