

BOMBAY HIGH COURT

Balu Shivling Dombé

Vs.

Divisional Magistrate

Criminal Appln. No. 695 of 1968

(Tarkunde and Palekar, JJ.)

26.09.1968

JUDGMENT

Tarkunde, J.

1. This petition has been filed under Articles 226 and 227 of the Constitution of India to challenge the legality of an order of externment passed against the petitioner under Section 56 (a) of the Bombay Police Act 1951, by the Divisional Magistrate, Pandharpur and confirmed in appeal by the State of Maharashtra.
2. The petitioner is a resident of Pandharpur where he owns a cycle shop and considerable immovable properties. He also owns agricultural lands in an adjoining village. He is a married man with wife and children.
3. On or about 15th June 1967 the petitioner was served with a notice issued by the Sub-Divisional Police Officer Pandharpur, under Section 59 of the Bombay Police Act, 1951 calling upon him to show cause why he should not be externed for a period of two years from the districts of Sholapur, Satara and Poona. It was alleged in the notice that because of the petitioner's illegal acts an atmosphere of danger and alarm had been created in Pandharpur city and the surrounding area. Instances of nine illegal acts of the petitioner were given in paragraphs 2 (a) to 2 (i) of the notice. It was also alleged in the notice that witnesses were unwilling to come forward to give evidence against the petitioner because of danger to their life and property. In response of the notice the petitioner appeared before the Sub-Divisional Police Officer, filed a written statement and led evidence of some witnesses. The Sub-Divisional Police Officer then made a report to the Divisional Magistrate, Pandharpur Division, recommending the externment of the petitioner. The Divisional Magistrate heard the petitioner again and entertained further evidence given by him. On 17th February 1968 he passed the impugned order externing the petitioner from the revenue limits of the Sholapur district and adjoining districts of Poona and

Satara for a period of two years from the date of the receipt of the order. The order was made under Section 56 (a) of the Bombay Police Act. The reasons in support of the order were given in detail in a Note which was made by the Divisional Magistrate on the findings of the Sub-Divisional Police Officer. The reasons given in the Note were referred to and summarized in the impugned order of the Divisional Magistrate.

4. The petitioner appealed to the State Government from the order of externment. The appeal was rejected on 20th June 1968. No reasons were given for rejecting the appeal.

5. As stated above, nine instances of illegal acts of the petitioner were given in Clauses 2 (a) to 2 (i) of the notice which had been issued by the Sub-Divisional Police Officer. The Divisional Magistrate found that, out of these allegations, the one in Clause 2 (a) was disproved by the petitioner and those in Clauses 2 (b), 2 (c), 2 (d), 2 (f) and 2 (g) were too vague to enable the petitioner to make a representation in regard to them. Thus, in passing the impugned order, the Sub-Divisional Magistrate relied only on the two grounds given in Clauses 2 (h) and 2 (i) of the notice. These clauses were :

"2(h): On 5-6-1967 you have slapped the Editor of 'Gophan' at Pandharpur for having published the news about the case against you for having murdered Vinabai. For that purpose a non-cognizable offence has been registered under Section 323 in Paniharpur Police Station No. 59 of 1967."

"2 (i): You have threatened and beaten the father of a witness on 6-6-1967 for having given evidence in the murder case against you. In that matter, an offence under Section 223-504 has been registered in Pandharpur Police Station No. 57 of 1967."

It appears that these allegations were made on the basis of statement made by two persons, Thite and Utpat, to the police. The Divisional Magistrate found that the statements of all persons other than Thite and Utpat were irrelevant to the order of externment which he was proposing to make. On the basis of the statements of Thite and Utpat the Divisional Magistrate came to the conclusion that the acts of the petitioner "are causing and are calculated to cause alarm, danger and harm to the persons of Shri Thite and Shri Utpat." The Divisional Magistrate also noted that Thite and Utpat had both stated that they had no courage to give evidence against the petitioner. After giving these findings, the Divisional Magistrate went on to say: Unless Shri Dombe (the petitioner) is externed there will be no peace in the localities where they (Thite and Utpat) are staying and the maintenance of law and order in these localities will become difficult." It was on these findings that the impugned order of externment was passed by the Divisional Magistrate.

6. We are of the view that the impugned order of externment is illegal and must be set aside. In the first place, the impugned order is not covered by Clause (a) of Section 56 of the Bombay Police Act, 1951, under which it was passed. The relevant requirement of Clause (a) of Section 56 is "that the movements or acts of any person are causing or calculated to cause alarm, danger

or harm to person or property." In our view, the reference, in Clause (a) to "alarm, danger or harm," is a reference to the alarm, danger or harm to the public generally and not to one or two individuals in the public. An order of externment cannot be passed under Clause (a) merely on a finding that the movements or acts of a person are causing or are calculated to cause alarm, danger or harm to one or two individuals in a locality. It is possible in certain cases that if a person causes or threatens to cause harm to a few individuals, his movements or acts may cause or be calculated to cause alarm, danger or harm to a considerable section of the public. There is, however, no finding by the Divisional Magistrate in the present case that the harm caused by the petitioner to Thite and Utpat had spread or was calculated to spread alarm, danger or harm to the general public or a considerable section of the general public. In fact, no such finding could possibly have been given by the Divisional Magistrate on the basis of the two minor incidents specified in Clauses 2 (h) and 2 (i) of the notice.

7. In his affidavit in reply, the Divisional Magistrate has submitted that since Thite and Utpat were members of the public, a finding that the acts of the petitioner were causing danger, alarm and harm to these persons was sufficient to support an order of externment under Section 56 (a) of the Act. We are unable to accept this submission. Section 56 of the Bombay Police Act, 1951, is restrictive of the fundamental rights "to move freely throughout the territory of India" and "to reside and settle in any part of the territory of India", which have been guaranteed by Articles 19 (1) (d) and (e) of the Constitution. Article 19 (5) provides that these fundamental rights shall not affect the operation of any law which imposes reasonable restrictions on the exercise of these rights "either in the interests of the general public or for the protection of the interests of any Scheduled Tribe." The expression "alarm, danger or harm to person or property", which occurs in Section 56 (a) of the Bombay Police Act, must if possible be so interpreted as to ensure that the provisions of that section are in conformity with the fundamental rights guaranteed by Article 19 (1) (d) and (e) of the Constitution. It must follow that the expression "alarm, danger or harm to person or property" must be held to refer to the alarm, danger or harm to person or property of the public at large, and not of one or two individuals among the public. This inference also follows from the fact that Chapter V of the Bombay Police Act, in which Section 56 falls, bears the heading "Special Measures for Maintenance of Public Order and Safety of State." We must accordingly hold that the Divisional Magistrate was not competent to pass the impugned order of externment on the basis of his finding that the acts of the petitioner had caused or were calculated to cause alarm, danger or harm to the two individuals, Thite and Utpat.

8. The impugned order is also bad for another reason. As stated above, one of the reasons mentioned by the Sub-Divisional Magistrate in support of the impugned order was that, unless the petitioner was externed, "there will be no peace in the localities where they (Thite and Utpat) are staying and the maintenance of law and order in these localities will become difficult." It seems obvious that an order under Section 56 (a) cannot be made on the ground that such an order was necessary for the preservation of peace or the maintenance of law and order in a particular locality. The notice given to the petitioner did not also contain any allegation to the

effect that his movements or acts had made it difficult to preserve peace or to maintain law and order in any locality. It must accordingly be held that the impugned order is bad because it was partly based on a ground which was irrelevant to the notice served on the petitioner and which did not fall within the ambit of Clause (a) of Section 56 under which it was passed.

9. There is a third ground why the impugned order requires to be set aside. Supposing that the two grounds mentioned in Clauses 2 (h) and 2 (i) of the notice permit the externment of the petitioner, it is difficult to understand why the Divisional Magistrate extended the order to the three revenue districts of Sholapur, Poona and Satara. Section 56 authorises the externment of a person outside the area within the local limits of the jurisdiction of the authority making the order as "such area and any district or districts, or any part thereof, contiguous thereto." These words, however, cannot be so interpreted as to enable the authority to extend the area of externment without reference to the purpose of the externment. In a sense, the whole State of Maharashtra is contiguous to any area within that State. If the authority concerned is not to have an arbitrary and unguided discretion in deciding the area of externment it must follow that the area must be so chosen as to meet the situation created by the movements or acts of the person to be externed. Such an interpretation is also necessary in order that Section 56 may be in conformity with Article 19 (5) of the Constitution referred to above. The restriction placed by Section 56 on the fundamental rights guaranteed by Article 19 (1) (d) and (e) of the Constitution cannot be held to be a reasonable restriction, unless the area of externment is restricted to the requirement created by the movements or acts of the person to be externed. The allegation contained in the notice in the present case was that the illegal acts of the petitioner had led to an atmosphere of danger and alarm "in Pandharpur city and the surrounding area." The two illegal acts on which the Divisional Magistrate relied were confined to Pandharpur city. No reasons have been given or suggested by the Divisional Magistrate for extending the area, not only outside the Pandharpur taluka, but to the district of Sholapur, and the districts of Poona and Satara as well.

10. In the result, the petition is allowed and the impugned orders of the Divisional Magistrate dated 17th February 1968 and of the State Government dated 20th June 1968 are set aside. The petitioner's costs will be paid by the second respondent, the State of Maharashtra.
Petition allowed.