

BOMBAY HIGH COURT

Nabukhan Mohammed Hussein Khan

Vs.

S. Ramamurthi

O.C.J. Miscellaneous Petition No. 277 of 1969

(Tulzapurkar, J.)

11/12.02.1970

JUDGMENT

Tulzapurkar, J.

1. By this petition filed under Article 226 of the Constitution the petitioner is seeking to challenge the validity and/or legality of the externment order No. 307/C/43 of 1969 dated March 3, 1969 passed against him by the Deputy Commissioner of Police, Zone II, Greater Bombay (respondent No. 1) under Section 56 of the Bombay Police Act, 1951.

2. It appears that with a view to initiate externment proceedings- against the petitioner a notice under Section 59 of the said Act was served upon him on October 30, 1968 by the Assistant Commissioner of Police, 'D' Division, Bombay calling upon him to tender his explanation regarding the allegations detailed at the foot of the notice, and for receiving the same and hearing him and his evidence, if any, the Assistant Commissioner fixed the appointment on November 6, 1968 at 11 A.M. at Nagpada Police Station. The allegations detailed at the foot of the notice were as follows:

"Allegations :-

I. Since April, 1968 in the localities of Foras Road, Bachu Shethwadi, Sukhlaji Street, Chikalpada and Nagpada and the areas adjoining thereto, in Greater Bombay, your acts and movements are causing alarm, harm and danger to the residents of the aforesaid localities and areas in that :-

(i) You assault the residents of the aforesaid localities and areas suspecting them to be giving information to the police about your illegal activities which are offences falling under Chapter XVI of the Indian Penal Code.

(ii) You commit robberies by extorting money from the residents of the aforesaid localities and areas at the point of knife and/or under threats of assault, which are offences

falling under Chapter XVII of the Indian Penal Code.

(iii) You use criminal force on women and girls in the aforesaid localities and areas with the intention of outraging their modesty which are offences falling under Chapter XVI of the Indian Penal Code.

II. Since April 1968, you have committed several acts of the nature mentioned in paras (i), (ii) and (iii) above in the aforesaid localities and areas.

III That the witnesses including the complainants in respect of your acts and offences mentioned in paragraphs (i), (ii) and (iii) above are not willing to come forward to give evidence against you in public by reason of apprehension on their part as regards the safety of their person in that they apprehend that they would be assaulted by you if they do so."

Pursuant to the aforesaid notice the petitioner submitted a detailed written explanation on November 26, 1968 substantially denying all the aforesaid allegations. During the course of the proceedings before the Assistant Commissioner of Police statements of several persons were recorded and statements of as many as 11 witnesses on the side of the petitioner were also recorded. The petitioner produced character certificates from Shri Ansari, J. P. and Shri Rusi Mehta, another J.P. and Municipal Councilor. Since according to him he was ill during- the material portion of the period covered by the notice the petitioner produced a medical certificate of Dr. H.G. Chinwalla under whose treatment he was and also led the evidence of his brother-in-law Capt. Idnani, an ex-military officer and an ex-Income-tax Officer, with whom he was staying on Bhulabhai Desai Road, during the period of his illness. The proceedings before the Assistant Commissioner of Police were over on or about December 7, 1968 and all the papers and record of the proceedings were sent by him to respondent No. 1, who appointed January 18, 1969 as the day for hearing the petitioner. The petitioner was represented by his advocate before respondent No. 1, who made his submissions on behalf of the petitioner showing cause against the proposed externment order. Eventually on March 3, 1969 respondent No. 1 passed the externment order against the petitioner directing him to remove himself out of the limits of Greater Bombay and Thana District by Central Railway route within two days from the date of the order and the petitioner was further directed not to enter or return to the said areas of Greater Bombay and Thana District for a period of two years from the date of that order without the permission in writing from the Commissioner of Police, Greater Bombay or the Government of Maharashtra. The operative part of this order is preceded by several recitals which show that respondent No. 1 had considered the evidence that had been placed before him against the petitioner in support of the allegations contained in the notice served under Section 59, that he also took into account the explanation tendered by the petitioner and all the evidence furnished by him and that after considering the entire material placed before him he was satisfied about the matters mentioned in paras. I, II and III of the said notice. A copy of the externment order has been annexed as exh. 'D' to the petition.

3. It appears that against the aforesaid order the petitioner has preferred an appeal to the State

Government under Section 60 of the said Act and while the said appeal is still pending, he has approached this Court by way of a writ petition challenging the validity or legality of the said order. He has challenged the order on the following' grounds, namely (a) that it has been passed mala fide by respondent No. 1, (b) that the grounds or allegations contained in the notice under Section 59 were and are too vague and no details or particulars thereof were furnished, (c) that respondent No. 1 himself should have received his explanation and heard the evidence of all witnesses and delegating that part of the enquiry to the Assistant Commissioner of Police was illegal and contrary to law, (d) that order docs not set out the reasons on the basis of which respondent No. 1 satisfied himself about the matters contained in paras. I, II and III of the notice, thereby rendering his right of appeal under Section 60 illusory and (e) that it directs him to remove himself outside the limits of Thana District when admittedly all his alleged activities were within the area of Greater Bombay which is illegal and unwarranted and the said fact also shows non-application of mind on the part of respondent No. 1. For these reasons the petitioner contends that the externment order is liable to be quashed. On the other hand, it is urged by the State that the petition is not maintainable as the remedy of the appeal has not been exhausted by the petitioner. Respondent No. 1 has emphatically denied that he has passed the impugned order mala fide. He has further pointed out that Section 59 permits delegation of holding of the enquiry and that he had duly authorized the Assistant Commissioner of Police to hold such enquiry. It is pointed out that general nature of the material allegations were disclosed to the petitioner in the notice as required by law and no details or particulars could be given having regard to the nature of the enquiry contemplated by the relevant sections of the Act. It has been contended that the petitioner is not entitled to know the reasons for the order and that the order directing him to remove himself outside Thana District Avas properly and justifiably passed by respondent No. 1 in view of the facts and circumstances of the case.

4. Dealing with the first ground of attack, it may be stated that Mr. Nadkarni contended that the impugned order had been passed mala fide by respondent No. 1 and he pressed into service both the factual as well as the legal aspects of the matter before me. According to him, from 1950 onwards the petitioner, for reasons unknown to him, came in the bad books of the police, especially the Nagpada Police Station and between 1950 and 1966 several proceedings by way of criminal prosecutions and preventive measures under special enactments were taken against him but in all these he was acquitted, exonerated or released. Mr. Nadkarni pointed out that admittedly the petitioner had been roped in three Sessions cases (Sessions Case No. 26/1/57 for offences under Sections 302, 324 and 114, Indian Penal Code, Sessions Case No. 262/1962 for acid throwing under Section 326 and Sessions Case No. 276/1965 for offences under Section 394, 326, 307 and 114, Indian Penal Code) but was acquitted in each of them and he had been also arrested on September 1, 1964 by the Nagpada Police Station for alleged offences under Sections 323, 342, 366, 392 and 114, Indian Penal Code but was discharged by the Presidency Magistrate for want of evidence and had been also arrested by the Princess Street Police Station on December 13, 1'366 under O.K. No. 786/1966 but was subsequently acquitted. He further pointed out that on two prior occasions externment proceedings were taken against his client,

first in 1951 and on the second occasion in 1961 and the first ended in a mere warning being issued to him on December 13, 1951 while the second were dropped when he applied for a transfer of the proceedings from one particular police officer to another on the ground that the first officer had a bias against him. Similarly on three occasions the petitioner was served with detention orders, twice under the Preventive Detention Act and once under the Defence of India Rules but Mr. Nadkarni pointed out that in respect of detention order served on March 6, 1953, when the petitioner preferred a writ petition to the Supreme Court against it, the order was withdrawn during the pendency of his writ petition, that the second detention order served upon him on October 10, 1961 was set aside by this Court on January 11, 1962 in Cr. Petition No. 1727 of 1961 preferred by him, while in respect of the third detention order served on him under Defence of India Rules in 1965 he was released on January 29, 1966 during the pendency of a habeas corpus petition preferred against that order. According to Mr. Nadkarni, because the police failed to get him convicted or externed or detained successfully in their aforesaid attempts, the present proceedings had been initiated against him and he had been externed and these facts show that the impugned order had been passed by respondent No. 1 in mala fide exercise of the powers vested in him. It is difficult to accept this contention of Mr. Nadkarni for more than one reason. In the first place, though it is true that several proceedings by way of criminal prosecutions and preventive measure were adopted against the petitioner and though in all those proceedings he was either acquitted, exonerated or released, there is no material on record to show what connection those prior proceedings had with respondent No. 1 who has passed the externment order in question. It is possible that the petitioner might have been proceeded against in the aforesaid manner on several occasions between 1950 and 1966 but how and why respondent No. 1 should be actuated with malice or mala fide intention towards the petitioner has nowhere been brought on record. Secondly, it is abundantly clear from the notice which was served upon the petitioner that all the activities on his part which were the subject-matter of enquiry related to the period between April 1968 and October 1968-in respect of which alleged activities no prosecution nor any preventive measures were adopted previously. Thirdly, respondent No. 1 has made it very clear in his affidavit that he has not taken into consideration, while passing the order in question, any of those prior proceedings adopted against the petitioner between 1950 and 1966 and in fact he confined his attention to the materials placed before him pertaining to the activities of the petitioner during the period April to October 1968. In view of these facts and circumstances, it is difficult to hold that respondent No. 1 was actuated by any malice or mala fide intention against the petitioner when he considered the relevant material and passed the order.

5. On the legal aspect of the question, Mr. Nadkarni contended that the allegations contained in the notice served under Section 59, if carefully scrutinised, would show that all the alleged activities on the part of the petitioner related to commission of cognisable offences on his part in the locality concerned and, according to Mr. Nadkarni, if that be so, he should have been proceeded against, in the ordinary way under the ordinary criminal law and it was absolutely unnecessary for respondent No. 1 to take recourse to extra-ordinary remedy of passing the

externment order under special provisions contained in Sections 56 to 59 of the Bombay Police Act, In this behalf, Mr. Nadkarni invited my attention to an observation made by Justice Mukherjea in *Ashutosh v. State of Delhi*¹ to the effect:

"...There could be no better proof of 'mala fides' on the part of the executive authorities than a use of the extraordinary provisions contained in the Act for purposes for which ordinary law is quite sufficient."

Relying upon the aforesaid observation Mr, Nadkarni urged that in the present ease when the alleged activities of the petitioner disclosed the commission of cognisable offences on his part the police could have prosecuted him under ordinary criminal law and the fact that respondent No. 1 had resorted to an extraordinary remedy of passing the externment order by using special provisions contained in the Bombay Police Act was sufficient proof of mala fides on his part and therefore the impugned order should be quashed. In my view, the observation relied upon by Mr. Nadkarni will have to be considered in the context of the facts and circumstances obtaining in that ease. There the detenu, who was ordinarily a resident of West Bengal and a member of the Working Committee as also of

¹[1953] A.I.R. S.C. 451

All India Committee of Hindu Mahasabha, arrived in Delhi on April 1, 1950 with a view to attend certain meetings of the aforesaid committees scheduled to be held on 1st and 2nd of April and immediately on his arrival an order was served on him by the District Magistrate directing his detention under the Preventive Detention Act, As a matter of fact the proposed meetings could not be held as the persons who were expected to take leading- part in the same were externed from Delhi. On a petition challenging the detention order on the ground of mala fides the Supreme Court observed that if as the District Magistrate thought that the detenu's presence in Delhi at that time might lead to disturbance of communal peace, there were certainly ample powers under the ordinary law which he could exercise for the purpose of preventing the mischief and further that it was difficult to see why a different treatment was meted out to the petitioner and he was consigned to detention in jail for an indefinite period of time. It was in those circumstances that the Court expressed the view that there could be no better proof of mala fides on the part of the executive authorities than a use of the extraordinary provisions contained in the Act for the purposes for which ordinary law was quite sufficient. In other words, it is only when in the circumstances of a given case, an ordinary remedy under the ordinary law is available and that too is sufficient to meet the exigency of the case that recourse to extraordinary provisions could be regarded as a mala fide exercise of the power on the part of the executive authority. The facts in the present case are entirely different. It is undoubtedly true that the alleged activities on the part of the petitioner as set out in the notice do pertain to the commission of cognisable offences on his part within the period mentioned in the notice, but at the same time the petitioner was also told that witnesses including the complainants in respect of his said acts and offences were not willing to come forward to give evidence against him in public for fear of danger to their person, and as regards this aspect of the matter also respondent No. 1 was

required to be and was in fact satisfied about and then he issued the impugned order. In other words, it was because of such terroristic means on the part of the petitioner that ordinary remedy of prosecuting him for cognizable offences under ordinary criminal law was not and could not be availed of by the police and it was in these circumstances that the externment proceedings were instituted against the petitioner and eventually the externment order was passed against him. It is, therefore, difficult to say that the recourse to extraordinary remedy of passing the externment order against the petitioner in the case would be proof of mala fides on the part of respondent No. 1. The first ground of attack levelled by Mr, Nadkarni against the externment order, therefore, fails.

6. Mr. Nadkarni next contended that respondent No. 1 himself should have examined the witnesses and should not have left this work to the Assistant Commissioner of Police. According to him, the said course deprived respondent No. 1 from seeing and watching the demeanour of the witnesses who gave evidence and had further deprived him of the opportunity of forming his own view about the said witnesses. He urged that such delegation of part of the enquiry to a subordinate officer was contrary to law. In my view, there is no substance in this contention for the simple reason that Section 59(1) of the Act clearly provides for recording of such evidence and holding the preliminary inquiry by an officer other than the officer who passes the externment order. Relevant portion of Sub-section (1) of Section 59 of the Act runs as follows:

"(1) Before an order under Section 55, 56 or 57 is passed against any person the officer acting under any of the said sections or any officer above the rank of an Inspector authorized by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witness, unless for reasons to be recorded in writing, the authority or officer is of opinion that such application is made for the purpose of vexation or delay...."

There is no dispute before me that the officer, who had served the notice, accepted the explanation and examined witnesses tendered by the petitioner, was the Assistant Commissioner of Police, much above the rank of an Inspector and had been duly authorized in that behalf by respondent No. 1. Besides, the provisions of Sections 56, 57 and 59 clearly imply that the officer duly authorized in that behalf, after he holds the inquiry, has to send the entire record of the enquiry to the Commissioner or the Deputy Commissioner who ultimately passes the externment order after considering the entire material so sent to him. It was not disputed by Mr. Nadkarni before me that in this case the entire material which was produced before the Assistant Commissioner was actually sent by him to respondent No. 1 who ultimately passed the externment order against the petitioner. In face of such statutory provision contained in Section 59(1) of the Act, it is difficult to accept Mr. Nadkarni's contention that the course adopted in the

present case could be regarded as unjustified or contrary to law.

7. The next two grounds of attack pressed by Mr. Nadkarni, in my view, could be conveniently dealt with together. According to Mr. Nadkarni, the grounds or the allegations contained in the notice under Section 59 which was served upon the petitioner were vague, inasmuch as, no details or particulars regarding any specific incident or its time or place or persons concerned therein were furnished to the petitioner and the petitioner was really handicapped in giving his explanation and meet the said allegations effectively. He, therefore, urged that the said notice was bad and consequently the externment order passed on the basis of such vague notice will have to be quashed. Secondly he contended that the externment order served upon the petitioner did not contain any reasons on the basis of which respondent No. 1 could be said to have satisfied himself about the matters set out in the relevant recital portion of the order (the relevant recital portion being almost a verbatim copy of the allegations contained in paras. I, II and III of the notice) and in the absence of such reasons being furnished to him, his right of appeal provided for under Section 60 of the Act became illusory. Mr. Nadkarni pointed out that under Section 60(2) the person against whom the externment order has been passed is required to prefer the appeal in duplicate in the form of a memorandum setting forth concisely "the grounds' of objection to the order appealed against" and he further pointed out that even the State Government under Sub-section (5) of Section 60 was required to give a reasonable opportunity to the externnee to be heard either personally or by a pleader, advocate or attorney and after such further inquiry as it may deem necessary the State Government had been empowered to confirm, vary or cancel or set aside the order appealed against. Mr. Nadkarni, therefore, urged that in order that the externnee's appeal against the externment order should become effective it was absolutely essential that reasons for the order should be furnished to him and in the absence of reasons the right of appeal conferred upon the externnee is rendered utterly illusory. In the present case, since no reasons were to be found in the order itself, nor were they communicated to him, though demanded later on, the petitioner's right of appeal has been rendered illusory and, therefore, the externment order was liable to be set aside.

8. Both these grounds of attack urged by Mr. Nadkarni against the externment order necessitate the consideration of the entire scheme of the relevant sections of the Act pertaining to preventive measure of externment, namely Sections 56, 57, 59, 60 and 61 of the Act. Fortunately, the scheme of these provisions came to be considered by the Supreme Court in two decisions, namely *Hari Khemu Gawali v. The Deputy Commissioner of Police, Bombay*² and *Bhagubhai Dullabhabhai Bhandari v. The District Magistrate, Thana*³ In both these cases the constitutional validity of these provisions, particularly Sections 56 and 57, was challenged and in the context of that challenge the Supreme Court considered the entire scheme pertaining to these provisions contained in the Act. In the first place in the former decision (Hari Gawali's case) on the nature of externment proceedings the Supreme Court quoted with approval the observation of Chief Justice Patanjali Shastri in *The State of Madras v. V.G. Row*⁴ 6. to the effect: "externment of individuals, like preventive detention, is largely precautionary and based on suspicion" and also

the observations of Lord Finlay in *Rex v. Halliday*⁵ to the effect: "the Court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". Secondly the Supreme Court has emphasised the fact that under the relevant provisions the question has to depend upon the subjective satisfaction of the officer or the authority concerned either in the first instance or in appeal. It is clear that Sections 56 and 57, under which externment orders could be passed in different sets of circumstances mentioned therein, in terms provide that the officer passing the order has to form his own opinion and has to satisfy himself about the existence of circumstances that warrant the issuance of the order in the case of a given individual, while the tenor of Section 60 suggests that the State Government as the appellate authority has to consider the matter subjectively; Sub-section (3) of Section 60 enables the State Government to make such further inquiry as it deems fit before confirming or varying or setting aside the order passed by the officer under Section 56 or 57. Dealing with the argument that the impugned order was based on previous orders of discharge or acquittal and was therefore illegal the Supreme Court observed as follows (p. 525) :

"...What has been urged against the legality of the order impugned is that it is based on previous orders of discharge or acquittal. It is said that those orders were passed because there was not sufficient evidence to bring the charge home to the accused. The insufficiency of the evidence itself may have been due to witnesses not being available to depose in open court or they may have been overawed and their testimony tampered with. These are all matters which cannot be examined by this Court in an objective way, when the legislature has provided for the subjective satisfaction of the authorities or officers who have been entrusted with the duty of enforcing those special provisions of the Act." (Italics are mine.)

Thirdly, one of the contentions raised before the Supreme Court was precisely the same which has been urged by Mr. Nadkarni before me, namely that the grounds or allegations furnished to the proposed externee in the notice served on him were very vague and no

²[1956] S.C.R. 506 : s.c. 58 Bom. L.R. 995 ⁴[1952] A.I.R. S.C. 19

³[1956] S.C.R. 533 : s.c. 58 Bom. L.R. 1007 ⁵[1917] A.C. 260

particulars were disclosed and as such the proposed externee could not deal with the same in his explanation and in any case it would be very difficult for him to avail of at least the second ground on which Section 61 permits him to get the master judicially examined, namely that there was no material before the authority concerned upon which it could have based its order, but the Court, while upholding the constitutional validity of Sections 56 and 57, negatived the said contention. After considering the entire scheme of Sections 55, 56, 57, 59, 60 and 61, the Court while dealing with the aforesaid argument arising under Section 59 read with Section 61 observed as follows (p. 523) :

"...In this connection it was argued on behalf of the petitioner that Section 59 only required the general nature of the material allegations against the person externed to be disclosed and that, as it did not further provide for particulars to be supplied to such a

person, it would be very difficult for him to avail of at least the second ground on which Section 61 permits him to get the matter judicially examined. But in the very nature of things it could not have been other' wise. The grounds available to an examinee 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 sections 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."

In another case decided by the Supreme Court, namely *State of Gujarat v. Mehbubkham*⁶ the same question arose for decision. There in the notice served upon the proposed examinee under Section 59 one of the allegations was that he used to consume eatables from the place of public entertainment without payment and when legal dues were demanded he used to beat the person. It was contended that no particulars, as to which place or places of entertainment was or were in contemplation, had been furnished to enable the proposed examinee to make his representation or give his explanation and as such the notice suffered from serious infirmity and consequently the externment order was liable to be set aside; the contention was accepted by the High Court but the Supreme Court negatived it saying that while considering the question whether notice under Section 59 suffered from any infirmity on the ground of vagueness the observations in Hari Gawali's case should be borne in mind. The Supreme Court in effect held that in the very nature of things the above particulars could not be furnished and further observed that the notice referred to the period during which the acts were stated ,to have been committed, as well as the area where they were said to have been committed and that was sufficient compliance of Section 59 which required that the general nature of material allegations against the proposed examinee be disclosed. On the question of what type of explanation the proposed examinee could give in reply to the notice, Mr. Justice Vaidialingam has observed as follows (p. 1474) :

⁶[1968] A.I.R. S.C. 1468

"...Considering it from the point of view of the party against whom an order of externment is proposed to be passed, it must be emphasized that when he has to 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 defense, 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."

9. From the aforesaid discussion of the relevant authorities, it will become clear that externment, proceedings are largely precautionary and based on suspicion, that the question whether the

individual concerned should be externed or not depends upon subjective satisfaction of the officer or authority concerned and that the provisions pertaining thereto in the Bombay Police Act are intended to be used in special cases requiring special treatment, that is to say, cases which cannot be dealt with under the ordinary law and in the very nature of things particulars regarding specific instances, the timings or places thereof or the persons concerned therein cannot be furnished to the proposed externee and all that the proposed externee is entitled to know is the general nature of material allegations against him and that on receipt of notice containing such general nature of material allegations against him, he is also to furnish his explanation which has to be of general nature and he could, of course, take up defences of the type mentioned in the observations of Mr. Justice Vaidialingam quoted above. It is in light of the aforesaid scheme of the said provisions as clarified by the Supreme Court in its aforesaid judgments that the aforesaid two grounds of attack levelled by Mr. Nadkarni against the externment order in this case will have to be considered. The first grievance of Mr. Nadkarni is that the allegations contained in the notice under Section 59 served upon the petitioner suffered from the infirmity of vagueness, inasmuch as, particulars regarding any specific instances or its timings or places or persons concerned therein have not been furnished to the petitioner and he was really handicapped in giving his explanation in regard to those allegations. If the notice served upon the petitioner is carefully scrutinised it would appear clear that the petitioner was informed about the nature of his activities allegedly indulged in by him, he was also informed the precise period of his alleged activities and he was further informed about the localities in which he had allegedly indulged in those activities and, in my view, that could be said to be sufficient compliance of Section 59 which requires that the general nature of material allegations should have been disclosed to him and it is also clear that in the very nature of things details or particulars of instances, their timings and places or persons concerned therein could obviously be not furnished to him, for, obviously, if these particulars could be furnished, then proceedings under the ordinary law of the land could have been easily instituted against him. The aforesaid grievance of Mr. Nadkarni therefore has no substance. As regards his further grievance that no reasons in the externment order had been furnished to his client and such non-furnishing of the reasons in the order has rendered his client's right of appeal illusory, the same, in my view, would stand on the same footing as the first grievance. If detailed particulars regarding specific instances or timings or places thereof or persons concerned therein cannot be furnished to the proposed externee while serving notice under Section 59 upon him, in view of the nature of proceedings instituted against him, then reasons in the externment order passed by the officer concerned could also be not furnished to the proposed externee. Mr. Nadkarni contended that reasons in the order should be furnished to the proposed externee in order that the appeal should not become illusory. What Mr. Nadkarni in effect wants the officer concerned to do is to furnish to the proposed externee his (officer's) process of reasoning by which he has satisfied himself about the matters contained in the allegations mentioned in the notice under Section 59; in other words, the officer passing the order has to disclose the basis on which he has rejected the explanation or evidence adduced by the petitioner against the proposed action and the basis on which he has accepted the other material which is received on record behind the back of the proposed externee and he has to indicate his

reasons why he preferred one type of evidence or material to the evidence or material furnished by the petitioner before him. Such disclosure of the process of reasoning would, in my view, defeat the very object with which proceedings under the said special provisions are undertaken. Secondly, under the relevant provisions of the Act, not merely the officer passing the order but also the appellate authority acting under Section 60 of the Act has to decide the question on his or its subjective satisfaction. If, therefore, the officer concerned has to decide the matter subjectively and has to form his subjective opinion as to whether on the material placed before him the proposed externment order should be passed or not, it would be incongruous to require the said officer to disclose his reasons or process of reasoning by which he has satisfied himself about the veracity or otherwise of the allegations contained in notice under Section 59. The appellate authority also, it is clear from the observations of the Supreme Court in Hari Hawaii's case, has to decide the matter in appeal subjectively by applying its own mind to all the materials that would be placed before it. It is true that under Section 60(2) the externnee is required to set out in his memorandum of appeal "the grounds of objection to the order appealed against" but in the very nature of things if his explanation in reply to notice under Section 59 has got to be of general nature and he could take defences of the type indicated in the observations of the Supreme Court in the case of *State of Gujarat v. Mehbubkhan*, I fail to see why the grounds of objection in appeal could not be of similar nature and he could certainly press similar type of grounds in his appeal which he 'could press before the officer concerned in the first instance. Having regard to the scheme of the relevant provisions and the nature of proceedings undertaken against the proposed externnee and for reasons indicated above, I am not inclined to accept Mr. Nadkarni's contention that the right of appeal conferred upon the externnee under Section 60 of the Act is rendered illusory if reasons in the externment order are not communicated to the externnee. In fact such an argument, though in connection with furnishing of detailed particulars in the notice under Section 59, was advanced before the Supreme Court in Hari Gawali's case but the same was repelled by that Court in the following words (p. 523):

"It was next contended that the provisions relating to hearing any evidence that may be adduced by the police or by the person proceeded against and right of appeal to the State Government conferred by Section 60 of the Act are illusory. We cannot agree that the right of appeal to the State Government granted to the person proceeded against by an order under Section 57 is illusory because it is expected that the State Government which has been charged with the duty of examining the material with a view to being satisfied that circumstances existed justifying a preventive order of that nature, will discharge its functions with due care and caution."

10. Moreover, in the present case, the externment proceedings were instituted against the petitioner under Section 56 of the Act-under both the Clauses (a) and (b) thereof. In other words, not only was the petitioner informed by the notice under Section 59 that his acts and movements in the localities concerned were causing alarm, harm and danger to the residents of the said localities and areas but he was also informed that the witnesses including the complainants in

respect of his acts and offences were not willing to come forward to give evidence against him in public by reason of apprehension on their part as regards safety of their person, in that they apprehended that they would be assaulted by him if they do so. If such were the nature of allegations made against the petitioner, it is obvious that details or particulars of specific instances, the timings and places thereof and the persons concerned therein, in the very nature of things, could never be furnished to the petitioner while serving the notice under Section 59 upon him, for, if such particulars were disclosed, the safety of the witnesses would be lost and the witnesses would be exposed to danger of personal harm. Similarly, furnishing of reasons in the externment order, that is to say, the process of reasoning by which the officer passing the externment order has satisfied himself about the veracity or otherwise of the allegations made against the proposed externnee, would expose the witnesses to the danger of personal harm. In the circumstances, it is difficult to accept Mr. Nadkarni's contention that the externment order passed against his client should be set aside either on the ground that the notice under Section 59 was vague or that no reasons for the order had been communicated to his client.

11. Mr. Nadkarni, however, relied upon the judgment of a Division Bench of this Court in *State v. Narsingh Jangsingh*⁷ where observations have been made by Mr. Justice Naik which lend support to his contention that in the absence of reasons being furnished to the externnee his right of appeal becomes illusory and such an order deserves to be quashed. Particularly, Mr. Nadkarni drew my attention to the following observation in that judgment:

"...In order that the right of appeal should not prove illusory, it is necessary that the externnees know the reasons or the grounds on which the orders of externment have been passed."

and Mr. Nadkarni pointed out that that was one of the grounds on which the externment order in that case was quashed by the Court. In the first place, the aforesaid observation on which Mr. Nadkarni has relied to some extent runs counter to the observations of the Supreme Court in Hari Gawali's case. It is true that in Hari (Hawaii's case the point that the appeal became illusory for want of reasons being furnished to the externnee had not directly arisen, but the Supreme Court concerned itself with that aspect of the matter in view of the contention that was urged before it on behalf of the externnee that the entire provision relating to hearing any evidence that may be adduced by the police or by the person proceeded against and the right of appeal to the; State Government conferred by Section 60 of the Act would become illusory if detailed particulars of the material allegations were not furnished to the proposed externnee, and in that context the Supreme Court indicated how the right of appeal could not be said to have been rendered illusory. Secondly, the decision of the Division Bench on which Mr. Nadkarni has relied is distinguishable on facts. In the case before the Division Bench, the Sub-Divisional Magistrate who had passed the externment order had stated that he had recorded his

⁷(1964) Criminal Application No. 1066 of 1963 (with Criminal Applications Nos. 1149 and 1150 of 1963), decided by Naik and Bal JJ., on April 28, 1964 (Unrep)

reasons for the order on a separate sheet of paper, while an affidavit had been filed on

behalf of the appellate authority that they were not aware of any such reasons having been given by the Sub-Divisional Magistrate or that such reasons having been recorded by the Sub-Divisional Magistrate on a separate sheet of paper; in view of this discrepancy which was there in what Sub-Divisional Magistrate had stated and in what was stated by the appellate authority in the affidavit before the Court, the Division Bench took the view that the entire material on the basis of which the externment order was passed including the reasons which had been given by the officer concerned had not been placed before the appellate authority and, therefore, the right of appeal was regarded as illusory, for, the appellate authority had not before it all the materials, particularly the reasons which had been separately recorded by the Sub-Divisional Magistrate. It is in light of these facts which obtained in that case that the Division Bench took the view that the right of appeal had become illusory and the externment order was liable to be quashed. The observations on which Mr. Nadkarni has relied will have to be considered in the light of peculiar facts which obtained in that case and I do not think that that decision has laid down any general proposition of law that reasons for externment must be furnished to the externee and that in the absence of such reasons being furnished to him the appeal becomes illusory or that therefore the externment deserves to be quashed, I may mention that Mr. Desai appearing for the respondents has invited my attention to the judgment of another Division Bench of this Court in *State v. Sushil Govind Kasale*⁸ where my brothers Palekar and Gatne JJ. have distinguished the aforesaid decision in *State v. Narsingh Jangsingh* on precisely the same ground on which I have tried to distinguish the same here. In this view of the matter, I am unable to accept Mr. Nadkarni's contention that the externment order in the present case is liable to be quashed because reasons for the order are not to be found in the order itself or have not been communicated to the petitioner.

12. The last contention of Mr. Nadkarni has been that respondent No. 1 has directed in his order that the petitioner should remove himself outside the limits of not only Greater Bombay but also of Thana District which is a contiguous district, and, according to Mr. Nadkarni, that part of the order, when the materials before the officer showed that all the alleged activities on the part of the petitioner were confined to certain localities in Greater Bombay, clearly indicated non-application of mind on the part of respondent No. 1 while passing the order and on that ground the externment order was liable to be set aside. In this connection he relied upon the judgment of this Court in the case of *Balu Shivling v. Div. Magistrate (1968) 71 Bom. L.R. 79*. In that case the Sub-Divisional Magistrate had satisfied himself only about two illegal activities on the part of the proposed externee, both of which activities were confined to the (own of Pandharpur and even so the proposed externee had been externed out of not only the entire district of Sholapur but also the adjoining districts of Satara and Poona and while setting aside the order Mr. Justice Tarkunde made the following observations (p. 82)

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"...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 well 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 the⁸(1970) Criminal Appeal No. 1201 of 1969, decided by Palekar and Gatne JJ., on February 3/4, 1970 (Unrep.) 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."

It is clear that the aforesaid observations lay down a principle that every order passed under Section 56 or Section 57 of the Bombay Police Act must, having regard to the constitutional protection of citizens, be a reasonable order and one test of reasonableness is that the area from which the externee is asked to keep away must have a reasonable relation to the nature of his activities and that it must not appear that the area specified from which he is to keep away is excessively wide. The aforesaid decision came to be considered by another Division Bench of this Court in *Raymond Anthony D'Souza v. Deputy Commissioner of Police*⁹ in which the order of externment, passed against the petitioner there, was challenged on the ground that though the activities of the petitioner were confined to localities like Santacruz in Greater Bombay he had been externed not only from limits of Greater Bombay but also from the limits of Thana District. After accepting the principle laid down in *Balu Shivling v. Div. Magistrate*, the learned Chief Justice sitting with Mr. Justice Kamat observed in connection with the aforesaid argument that was pressed before them as follows:

"...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 by 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. The same unreasonableness which appeared in the case before the Division Bench does not appear in the present case. We are unable, therefore, to accept the second contention."

In my view, the position that obtains in the present case is very much the same which obtained in the case before the learned Chief Justice and Mr. Justice Kamat. It is true that the area of the activities of the petitioner has been said to be the localities of Foras Road, Bachhu Seth Wadi, Sukhlaji Street, Chikalpada and Nagpada and the area adjoining thereto in Greater Bombay, but these areas are also sufficiently wide. Besides it is undisputed that the contiguous area of Thana district is intimately connected with the

⁹(1969) Criminal Application No. 1427 of 1968, decided by Kotval C.J. and Kamat J., on March 17, 1969 (Unrep) industrial area of Greater Bombay with cheaper and quicker means of transport and communication. If, therefore, having regard to these facts respondent No. 1 thought fit that the petitioner should be asked to remove himself not only out of Greater Bombay but also beyond the limits of Thana district, it cannot be said that respondent No. 1 had either acted unreasonably or without applying his mind to the facts of the case. The nature of the activities in which the petitioner indulged in and the localities and the areas in which he indulged in those activities were such that these could have repercussion on the contiguous areas of Thana district and in this view of the matter, I do not think that the principle enunciated in *Balu Shivling v. Div. Magistrate* could be invoked in this case for the purpose of quashing or setting aside the externment order.

13. In the result, I am inclined to take the view that no sufficient ground has been made out for quashing the externment order passed against the petitioner. Rule is, therefore, discharged with costs.

Rule Discharged.