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GAZI SADUDDIN,

v.

STATE OF MAHARASHTRA AND ANR.

AUGUST 25, 2003

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[R.C. LAHOTI AND ASHOK BHAN, JJ.]

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*Bombay Police Act, 1951—Section 56 (1)(bb)(1)—Order of externment—Interference with—When called for—Held: When satisfaction recorded by the authority passing externment order is based on no evidence, misreading of evidence or which a reasonable person could not form or person concerned was not given due opportunity, interference is called for—On facts, satisfaction recorded based on material on record, thus, courts could not interfere with the order—Order of externment upheld.*

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Appellant was issued notice under Section 59 of the Bombay Police Act, 1951. It was alleged that three criminal proceedings were registered against him; that he was creating disharmony among the communities; that he had links with SIMI; that he got himself elected as a Corporator on the basis of false caste certificate obtained by him; and that he had extorted money. Appellant filed a reply denying the allegations. Deputy Commissioner of Police

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passed an order of externment under Section 56(1)(a),(b) and (bb) of the Act against the appellant which was confirmed. High Court on perusal of the original documents and statements of the witnesses recorded by the police in-camera holding that the activities of the appellant were prejudicial to the maintenance of public order in the locality, upheld the order of externment

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based on Section 56(1)(bb)(1) of the Act. However, it did not find any substance in the allegations pertaining to clauses (a) and (b) of Section 56(1) of the Act. Hence the present appeal. Appellant contended that the notice having not been upheld under clauses (a) and (b) the same deserves to be struck down as a whole being excessive.

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Dismissing the appeal, the Court

**HELD:** 1. Primarily the satisfaction has to be of the authority passing the order of externment under the Bombay Police Act, 1951. If the satisfaction recorded by the authority is objective and is based on material on record then the courts would not interfere with the order passed by the authority only

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because another view possibly can be taken. Such satisfaction of the authority can be interfered with only if the satisfaction recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act.

[972-F-H]

2. In the instant case, there was no lapse in following the procedure laid down under the Bombay Police Act, 1951 and the Rules in passing the order of externment. Procedure laid down under the Act culminating in passing of the order of externment was duly followed. Further the perusal of the statements made by the witnesses spells out that the appellants had threatened the witnesses with dire consequence for not participating in the demonstration and every programme organized by him, he was spreading communal feelings amongst the residents of the locality, and was harassing the public in general and causing disturbance to the public tranquility and security of the locality. Thus, a case was made out for the externment of the appellants under Section 56(1)(bb)(1) of the Act. [972-F; 973-E, F]

3. Section 56(1) clearly spells out that there are four main clauses on the satisfaction of which an order of externment can be passed. In the instant case, the notice contained allegations pertaining to clauses (a), (b) and (bb). Non-sustainment of the notice pertaining to allegations regarding clauses (a) and (b) does not mean that notice under clause (bb) cannot be sustained if there is evidence present to sustain the allegations made regarding clause (bb) of Section of 56(1) of the Act. [972-B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1051 of 2003.

From the Judgment and Order dated 26.2.2003 of the Bombay High Court in Crl. W.P. No. 135 of 2002.

Subrat Birla and S.C. Birla for the Appellant.

Kanwal Nain and Ravindra Keshavrao Adsure for the Respondents.

The Judgment of the Court was delivered by

**BHAN, J.** Leave granted.

This appeal is directed against the judgment and order of the High

- A Court of Bombay in Criminal Writ Petition No. 135 of 2002 wherein the High Court has confirmed the order passed by the Deputy Commissioner of Police, Aurangabad dated 9.11.2001 under Section 56 (1)(a),(b) & (bb) of the Bombay Police Act, 1951 (hereinafter referred to as 'the Act') externing the appellant from Districts of Aurangabad, Jalgaon and Jalna for a period of two years. Appellant was directed to inform his residential address to the nearest Police Station within whose jurisdiction he would reside during the period of externment and also to report to that Police Station at least once in a month. The said order was confirmed by the Principal Secretary (Appeals and Security) to the Government of Maharashtra, Home Department on 24.1.2002.

C Briefly stated the facts are:

- The appellant was served with a notice dated 3rd September, 2001 on 5th September, 2001 issued under Section 59 of the Act by the Assistant Police Commissioner, Aurangabad City. The notice referred to three criminal proceedings registered against the appellant. It was alleged in the notice that D Movements and activities of the appellant had caused alarm in the locality and created an atmosphere of terror. It contained details of three incidents having occurred within a period of fortnight or a month prior to the date of notice wherein the appellant had threatened the people for seeking their cooperation in teaching a lesson to Hindu community. It was mentioned that the appellant had established contacts with SIMI (Students Islamic Movement of India), an organisation engaged in activities against communal harmony and national security and in such capacity having participated in a programme of burning the effigies of leaders of RSS and VHP, thereby causing communal tension in the locality. It was also alleged that the appellant got himself elected as a Corporator on the basis of a false caste certificate obtained by him. It contained the details of an incident in which the appellant had extorted Rs. 700 about 4/5 days prior to the date of notice in the middle of the night.

- Upon service of notice the appellant filed a detailed reply stating therein that he belonged to a good family. That he was a Municipal Corporator elected from a constituency, which was mainly of non-Muslim voters and, therefore, according to him, there was no substance in the allegations that he was creating disharmony amongst the communities. According to him, Police had falsely implicated him in the proceedings as he ventilated the grievances of the citizens and stood against the Government machinery. With regard to the allegations that the appellant had got himself elected on the basis of wrong caste certificate it was stated that the matter was pending before the H High Court at Aurangabad. The incidents mentioned in the notice alleging

that he was creating disharmony amongst the communities was denied. It was also denied that he was creating communal tension or having links with SIMI. A

The High Court came to the conclusion that the allegations made in the notice *per se* attracted clauses (a),(b) and (bb) (1) of Section 56 (1) of the Act. The High Court did not find any substance in the allegations pertaining to clauses (a) and (b) of Section 56 (1), however, the High Court upheld the order of externment based on clause 56(1)(bb)(1) of the Act. B

The High Court after perusal of the original documents and the statements of three witnesses recorded by the police in camera came to the conclusion that allegation pertaining to part 1 of clause (bb) of Section 56(1) were duly proved. Order of externment passed on the basis of these allegations was sustained. The High Court was satisfied that there was material on the record to come to the conclusion that the activities of the appellant were prejudicial to the maintenance of public order in the locality as provided under the Act. C D

Counsel for the parties have been heard at length. Before referring to the submissions made, it would be in the fitness of things to refer to the statutory provisions.

Section 56(1) of the Act reads as follows: E

56. "Removal of persons about to commit offence.

(1) Whenever it shall appear in greater Bombay and other areas for which a Commissioner has been appointed under Section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the official Gazette, extend the provisions of this Section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf (a) that the movements or acts of any person are causing or 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, or in the abetment of any such offence and when in the opinion of such officer, witnesses are not willing to come forward to give evidence in public against such F G H

- A person by reason of apprehension on their part as regards the safety of their person or property or (bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and Other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, or (c) that any outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or such prejudicial act, or the outbreak or spread of such disease or notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether within the local limits of the jurisdiction of the officer or not and whether continuous or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as "the specified area or areas") from which he was directed to remove himself."

Above provisions clearly spell out that there are four main clauses on satisfaction of any one of which an order of externment can be passed though some of the clauses also incorporate more than one option. They can be analysed as under:

- F "(a) that the movements or acts of any person are causing or 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;

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OR

An offence punishable under Chapters XII, XVI or XVII of IPC

OR

- H In the abatement of any such offence:

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 of their part as regards safety of their person or property: OR A

(bb) that there are reasonable grounds for believing that such person is acting or is about to act— B

(1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and Other Dangerous Activities Act, 1980.

(2) In any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the explanation to sub-section (1) of Section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. C

(c) That any outbreak of epidemic disease is likely to result from the continued residence of an immigrant.” D

“Public Order” has been defined under the Maharashtra Prevention of Communal, Antisocial and Other Dangerous Activities Act, 1980. It reads:

“Acting in any manner prejudicial to the maintenance of public order means— E

(i) propagating, promoting or attempting to create, or otherwise functioning in such a manner as to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community or language of any persons or class of persons.” F

Learned counsel for the appellant contended that the notice did not contain allegation to the effect that the witnesses were not coming forward to depose against the appellant, whereas the order of externment contained satisfaction of the competent authority on that count. It was urged that since the notice did not indicate the ingredient that “witness are unwilling to give evidence against him in public” there could be no externment on that ground. Allegations regarding the unwillingness of the witnesses to give evidence openly against the appellant pertains to the first part of Clause (b), whereas the externment order was based on later half of clause (b), therefore, the externment order based on the grounds not communicated to the appellant therein was not sustainable. The High court, therefore, came to the conclusion G  
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- A that the allegations in relation to clauses (a) and (b) of Section 56 (1) was not sustainable. As the High Court did not find substance in the allegations with regard to the clauses (a) and (b) of Section 56 (1), we are not required to examine the correctness or otherwise of the findings recorded regarding allegations pertaining to clauses (a) and (b) as the State has not come up in appeal against those findings. Learned counsel for the appellant then contended that notice having not been upheld under clauses (a) and (b) the same deserves to be struck down as a whole being excessive. We do not agree with this submission. As indicated above, Section 56(1) clearly spells out that there are four main clauses on the satisfaction of which an order of externment can be passed. The notice contained allegations pertaining to clauses (a), (b) and (bb). Non-sustainment of the notice pertaining to allegations regarding clauses (a) and (b) does not mean that notice under clause (bb) cannot be sustained if there is evidence present to sustain the allegations made regarding clause (bb) of Section 56 (1). We have already indicated that we are not required to go into the allegations made in the notice pertaining to clauses (a) and (b) as State has not come up in appeal challenging those findings. This submission does not advance the case of the appellant in any way.

- E The High Court has confirmed the order of the authority in regard to the allegations pertaining to Section 56 (1) (bb) only which refers to the conduct of a person which is in any manner prejudicial to the maintenance of public order, i.e. propagating, promoting or attempting to create, or otherwise functioning in such a manner as to create, feelings of enmity or hatred or disharmony on the grounds of religions, race, caste, community or language of any persons or class of persons.”

- F It has not been pointed out that there was any lapse in following the procedure laid down under the Act and the Rules in passing the order of externment. Procedure laid down under the Act culminating in passing of the order of externment was duly followed. Primarily the satisfaction has to be of the authority passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the courts would not interfere with the order passed by the authority only because another view possibly can be taken. Such satisfaction of the authority can be interfered with only if the satisfaction recorded is either demonstratively perverse based on no evidence, misreading of evidence or which a reasonable person could not form or that the person concerned was not given due opportunity resulting in prejudicing his rights under the Act.

In view of the findings recorded by the High Court there is no need for us to examine the case on facts but since the learned counsel for the appellant persisted and took us through the entire evidence present on the record including the statement of three witnesses recorded by the police in camera we might record our findings on facts as well. A perusal of the statements of three witnesses spells out that he had threatened the witnesses with dire consequences for their failure to participate in the demonstration organised by him. It has been stated by the witnesses that the appellant used to give threats and beating to poor persons in the locality and had created a terror in the locality. The appellant was instigating the residents on communal lines and created disharmony amongst them. He was harassing the public in general and disturbed the public tranquility and security of the locality. That the appellant had given beating to the two of the witnesses and snatched Rs. 700 and Rs. 300 respectively from them at the point of a knife. The third witness has also stated that the appellant was in the habit of beating people and threatening them as a result of which a terror was created in the minds of the residents of Manjarpura, Harsh Nagar, Lota Karanja Area. That he was communal and spreading hatred amongst the communities. It was also stated by him that he had given beating to him and threatened him that if he did not help him in teaching a lesson to the Hindu community then he would not spare his life.

A perusal of the aforesaid statements made by the three witnesses spells out that the appellant had threatened the witnesses with dire consequence for not participating in the demonstration organised by him. He threatened them with dire consequence if they did not support him and attend every programme organised by him. He was spreading communal feelings amongst the residents of the locality. He was harassing the public in general and causing disturbance to the public tranquility and security of the locality. We are satisfied that a case was made out for the externment of the appellant under clause (1) of Section 56 (1)(bb) of the Act.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same.

N.J.

Appeal dismissed.