

State Of Maharashtra & Anr vs Salem Hasan Khan on 9 March, 1989

Equivalent citations: 1989 AIR 1304, 1989 SCR (1) 970, AIR 1989 SUPREME COURT 1304, 1989 (2) SCC 316, (1989) 2 GUJ LH 220, (1990) 1 MAHLR 256, 1990 CHANDLR(CIV&CRI) 162, (1989) 2 CRIMES 344, (1989) 2 JT 96 (SC), 1989 SCC (CRI) 365, (1989) 3 BOM CR 120

Author: L.M. Sharma

Bench: L.M. Sharma, S.R. Pandian

PETITIONER:

STATE OF MAHARASHTRA & ANR.

Vs.

RESPONDENT:

SALEM HASAN KHAN

DATE OF JUDGMENT 09/03/1989

BENCH:

SHARMA, L.M. (J)

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SHARMA, L.M. (J)

PANDIAN, S.R. (J)

CITATION:

1989 AIR 1304	1989 SCR (1) 970
1989 SCC (2) 316	JT 1989 (2) 96
1989 SCALE (1) 700	

ACT:

Bombay Police Act: Sections 56 and 60--Externment proceedings-Not necessary for State Government to give reasons while making externment order or disposing of an appeal in respect of such order-Reasoned order would cause harassment and frustrate purpose of externment proceedings.

HEADNOTE:

An externment order was passed against the respondent under section 56 of the Bombay Police Act on the ground that he was found to be frequently engaged in illegal business of narcotics and was also involved in several cases of riot and criminal intimidation. The respondent filed an appeal under

section 60 of the Act and while the appeal was pending moved the High Court with a writ application. The State Government dismissed the appeal by a short order.

Before the High Court 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 the initial externment order.

Allowing the appeal by the State to the extent of correcting the error of law only, it was,

HELD: (1) The High Court was in error in quashing the order of externment as confirmed by the State Government in appeal, on the ground that the State Government omitted to give reasons.

(2) 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 band 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 of reprisal witnesses are unwilling to depose in public. [972C-E, G]

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(3) 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 externnee. A reasoned order containing a discussion would probably spark off another round of harassment. [972G]

Pandarinath Sridhar Rangnekar v. Deputy Commissioner of Police, [1973] 3 SCR 63, followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 205 of 1989.

From the judgment and Order dated 24.2.1987 of the Bombay High Court in CrI. W.P.No. 67 of 1986. A.M. Khanwilkar for the Appellant.

Syed Ali Ahmad, Tanweer Ahmad, Mohan Pandey and Ms. J. Ahmed for the Respondent.

The Judgment of the Court was delivered by SHARMA, J. 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 11.5.1980 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 Pandarinath Sridhar Rangnekar v. Deputy Commissioner of Police, [1973] 3 SCR 63 where in 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 band 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 of 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:--

"Precisely for the reason for which the proposed externnee 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."

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 externnee. 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 is accordingly allowed to this extent.

R.S.S.
allowed.

Appeal allowed.