

Quashing of Externment Order for Lack of Justification

Case Name: Sher Abbas Haidar Abbas Siya v. Divisional Commissioner, Konkan Region

Citation: 2024:BHC-AS:42917

Act: Maharashtra Police Act

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



Disclaimer: This document contains the Court opinion. It is provided on an "as is" basis, for educational & informational purposes only.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (ST.) NO. 3448 OF 2024

Sher Abbas Haidar Abbas Siya
@ Sheru Haidar Vagh
Age : 24, Occu: Labour,
Indian Inhabitant, Residing at :
Boricha Pada, Arnala,
Opp. Martin Report, Virar (W)

..... Petitioner

v/s.

1. Divisional Commissioner,
Konkan Region
Old office, First Floor, Vistar Bhavan,
Behind Elphinstone College,
Kala Ghoda, Fort Mumbai – 400 032.
2. The Deputy Commissioner of Police,
Circle – 3, Mira Bhaindar, Vasai,
Virar MIDC Central District : Palghar
3. The State of Maharashtra
Through The Circle – 3,
Mira Bhaindar, Vasai,
Virar MIDC Central District : Palghar

..... Respondents

Mr. Rajas Naik for the Petitioner.
Mr. C.D. Mali, APP for the State.
Mr. Rupesh Dalvi, API, Arnala Police Station, present.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 19th SEPTEMBER, 2024.

PRONOUNCED ON : 25th OCTOBER, 2024

JUDGMENT :-

. The aforestated Petition mounted a challenge to an Order dated 19th January 2024, passed by Respondent No.1 thereby the

Petitioner's Externment Appeal No.186/2023 has been dismissed. The Petition also challenged an 'Order of Externment' dated 28th October, 2023 whereby Respondent No.2 externed the Petitioner from the limits of Palghar, Thane, Mira-Bhayander and Vasai-Virar Commissionerate, Nashik, Raigad, Mumbai and Mumbai Suburbs, for a period of 02 years.

2) Heard Mr. Rajas Naik, learned Advocate for the Petitioner and Mr. C.D. Mali, learned A.P.P. for the Respondents. Perused the record.

3) Rule. Rule is made returnable forthwith. Heard finally with consent of the parties.

4) The facts giving rise to this Petition are that, considering the proposal received from *Arnala* Police Station seeking for an 'Order of Externment', a notice dated 3rd August 2023 was issued by Enquiry Officer & Assistant Police Commissioner, Nalasopara, under Section 59 of the Maharashtra Police Act ('the Act' for short) and the Petitioner was called upon to show cause as to why he should not be externed from the limits of certain areas stated in the notice, for a period of 02 years. The Petitioner submitted his reply. After considering the matter, the Enquiry Officer recommended for Petitioner's externment along with his report.

5) Based on the said report, Respondent No.2 issued the 2nd notice dated 13th October, 2023 to the Petitioner and called upon him to show cause as to why he should not be externed from the limits of said areas. Certain cognizable and non-cognizable offences registered against

the Petitioner, preventive actions taken against him in the past and details of in-camera statement of two confidential witnesses 'A' and 'B' were the base of the show cause notice. Said material is as under :-

Schedule A- Cognizable Offences :-

Sr. No.	Police Station, Crime Regn. Nos. and Sections	Date of Registration of the crime	Current status
1	Arnala Police Station, Crime Reg.No. 76/2017, punishable under sections 325,323,452,504,506 of the IPC.	23/06/2017 at 22.45 hrs.	Subjudice
2	Arnala Police Station, Crime Reg.No. 376/2021, punishable under sections 354, 324, 452, 427, 141, 143, 147, 149, 504, 506 of the IPC.	28/11/2021 at 00.15 hrs.	Subjudice
3	Arnala Police Station, Crime Reg.No. 3/2021, punishable under sections 354, 324, 323, 504, 34 of IPC and u/s 3 (r) (s) (w) (i) (ii) of Scheduled Castes and Scheduled Tribes Act 1989 as Amended by 2015.	on 03/01/2022 at 21.53 hrs.	Subjudice
4	Arnala Police Station, Crime Reg.No. 17/2022, punishable under sections 354, 323, 504, 506 of IPC, Sections 11,12 of POCSO Act and alongwith Section 3 (1) (w) (i) (ii), 3(2), (5a) of Atrocities Act, 1989.	On 25/12/2018 at 11.30 hrs.	Subjudice
5	Arnala Police Station, Crime Reg.No. 236/2023, punishable under Sections 354, 327, 323, 143, 147, 149, 109, 504, 506 of IPC.	On 20/06/2023 at 23.54 hrs.	Subjudice
6	Virar Police Station, Crime Reg.No. 992/2020, punishable under Sections 341 of IPC along with section 135 of Maharashtra Police Act.	On 19/11/2020 at 16.56 hrs.	Subjudice
7	Virar Police Station, Crime Reg.No. 12/2021, punishable under Section 37 (1), (3), 135 of Maharashtra Police Act	On 04/01/2021	Subjudice

Schedule B- Non-Cognizable Offences :-

Sr. No.	Police Station	N.C.Reg. No.	Sections	Date of filing
1	Arnala Police Station	651/2015	IPC Sections 504, 506	09/07/2015
2	Arnala Police Station	100/2016	IPC Sections 323,504,506	26/01/2016
3	Arnala Police Station	467/2017	IPC Sections 323,504,506	10/05/2017
4	Arnala Police Station	507/2017	IPC Sections 323,504,506	04/06/2017
5	Arnala Police Station	203/2018	IPC Sections 427	20/02/2018
6	Arnala Police Station	40/2022	IPC Sections 504,506	07/01/2022
7	Arnala Police Station	12/2023 HM	IPC Sections 504,506	25/03/2023

Schedule C- Details of Preventive Measures are as follows :-

Sr. No.	Proposal No	Section	Information
1	27/2017 Dated- 23/05/2017	Section 107 of Cr.P.C.	The proposal has been sent to the Tehsildar, Vasai.
2	65/2017 Dated- 22/12/2017	Section 107 of Cr.P.C.	The proposal has been sent to the Tehsildar, Vasai <i>vide</i> Outward No.9729/2017
3	01/2023	Section 110 (e) (g) of Cr.P.C.	As the externment proposal is to be submitted, the chapter case proposal is cancelled.

5.1) The in-camera statements of the confidential witnesses 'A' and 'B' revealed that, the Petitioner has been residing at *Boripada* Alection, *Arnala*, Virar (W), Taluka-Vasai. Taking support of 'lal bavta' party, the Petitioner has been involved in creating terror in village Arnala, spreading hatred in the society, causing communal and religious disputes,

filing false complaints, causing disputes over land and threatening members of Christian, Agri-koli community to book them in false Atrocity cases even though the Petitioner is non-SC&ST member, misbehaving with women in the area, committing rape, etc. The Petitioner has also involved in non-cognizable offences. Thus, Petitioner has become danger to the society and people who are victim of the illegal acts of the Petitioner and witnesses thereof, do not come forward to lodge complaint against the Petitioner. There is every possibility of breach of peace in the said area, due to the Petitioner.

6) The Petitioner replied the said notice and examined his witnesses. After considering the entire material, the Respondent No.2 passed the impugned Order of Externment dated 28th October, 2023 and directed the Petitioner to leave the limits of Palghar, Thane, Mira-Bhayander and Vasai-Virar Commissionerate, Nashik, Raigad, Mumbai and Mumbai Suburbs, for a period of 02 years.

7) Petitioner impugned the Order of his Externment in Externment Appeal No.186/2023, however, was unsuccessful. Hence, Petition.

8) Mr. Naik, learned Advocate for the Petitioner submitted that, the Petitioner is not convicted so far in any of the crimes considered for passing the Order of Externment. Said crimes were allegedly committed against an individual and not against the public at large. The in-camera

statement of the witnesses are not in accordance with Section 59 of the Act. There is no live-link between the said crime and the Order of Externment. In fact, according to the learned Advocate for the Petitioner, the subjective and objective satisfaction is missing in the impugned Orders. Lastly, he submits that, the impugned Order of Externment is excessive as the Petitioner has been externed from several areas than necessary and for a complete period of two years but without stating a single justifiable reason for the same.

9) Mr. Mali, learned APP for the State, on the other hand, submits that the impugned Orders are well-reasoned. Every material relating to the criminal activities of the Petitioner has been considered. Said exercise clearly indicates the application of the mind as well as the subjective satisfaction of the said authorities. He submits that, there are sufficient means of transportation to easily access the externment areas. Therefore, and considering the mindset of the Petitioner, it was necessary to extern the Petitioner from the limits of several areas. Lastly, learned APP submits that, the criminal antecedents of the Petitioner and its nature, justify his externment for a period of 02 years. He, therefore, urged to dismiss the Petition.

10) I have carefully considered the show cause notices, impugned Orders and rival submissions. The Petitioner was ordered to be externed by invoking the provisions contained in Section 56 (1) (a) and (b) of the

Act. It is settled law that, the measure of externment by its very nature is extraordinary. It has the effect of forced displacement from the home and surroundings. Often it affects the livelihood of the person ordered to be externed. Thus, there must exist justifiable grounds to sustain an Order of Externment. The Order of Externment, therefore, must be strictly within the bounds of the statutory provisions. Under clause (a) of sub-Section (1) of Section 56, the Externing Authority must be satisfied on the basis of the objective material that, the movements or acts of the person to be externed are causing or calculated to cause alarm, danger or harm to person or property. Under clause (b), there must be an objective material on the strength of which the Externing Authority must record subjective satisfaction that there are reasonable grounds for believing that the externee is engaged or about to be engaged in the commission of offences involving force or violence.

11) Mere registration of number of offences by itself does not sustain an externment under Section 56 (1) (b) of the Act. The offences must either involve elements of force or involve or fall under Chapters XII, XVI, and XVII of the Indian Penal Code. In addition, the Externing Authority must record satisfaction that, the witnesses are not willing to come forward to give evidence in public against the externee by reason of apprehension on their part as regards the safety of their person or property.

12) As stated above, in all 07 crimes have been considered against the Petitioner. Out of them, the crimes at Serial Nos.1, 2, 3, 6 and 7 are of the years 2017, 2021, 2022, 2020 and 2021 respectively. The first five non-cognizable offences were registered between 2015-2018. However, immediately thereafter, no action for externment was initiated by issuing necessary show cause notice. Thus, there is no live-link between the said crimes and the proposal of the externment, submitted against the Petitioner.

13) The object of externment is not to penalize the externnee, but to distance him from the surroundings which prove helpful for commission of the offences and thereby disarm his influence in the said area. Therefore, there ought to be a live-link between the acts of the externnee and the action of externment. In short, stale cases cannot be taken aid of to pass an Externment Order. This has direct relevance to the subjective satisfaction based on which the an Externment Order is passed.

14) Insofar as crimes at serial no.5 is concerned, the said crime was committed against an individual.

15) Another aspect of the matter which requires an attention is, out of the seven crimes, first five crimes were registered at Arnala Police Station and last two crimes at Virar Police Station. The impugned Orders, however, do not indicate any satisfactory or compelling reason to extern

the Petitioner out of the limits of Palghar, Thane, Mira-Bhayander and Vasai-Virar Commissionerate, Nashik, Raigad, Mumbai and Mumbai Suburbs, for a period of 02 years, in the backdrop of the show cause notice referring only to said seven crimes. To that extent, the ‘Order of Externment’ is excessive.

16) As held in the case of *Deepak Dongre* (supra), “there cannot be any manner of doubt that an Order of Externment is an extraordinary measure. The effect of the Order of Externment is depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence. ...”. “As the Order of Externment’ takes away fundamental right under Article 19 (1) (d) of the Constitution of India, it must stand the test of reasonableness contemplated by clause (5) of Article 19.”

17) In the case in hand, the ‘Order of Externment’ did not mention a single reason as to why the Petitioner should remove himself for a period of 02 years out of the limits of the various districts, as directed in the ‘Order of Externment’. This fact coupled with the fact that, stale instances were considered to reach the objective and subjective satisfaction for passing the ‘Order of Externment’, made it apparent that the said Orders lack application of the mind, nevertheless, the Appellate

Authority upheld the said Order. This is not only erroneous but also illegal.

18) In the backdrop, the impugned 'Order of Externment' dated 28th October, 2023 passed by the Respondent No.2 and the impugned Order dated 19th January, 2024 thereby dismissing the Externment Appeal No.186/2023 filed by the Petitioner, are liable to be quashed and set aside. The Petition succeeds, thus. Hence, following Order :-

(a) Writ Petition (St.) No.3448 of 2024 is allowed.

(b) The impugned Order dated 28th October, 2023 passed by the Respondent No.2 – The Deputy Commissioner of Police, Circle-3, Mira Bhaindar, Palghar and the impugned Order dated 19th January, 2024 passed by the Respondent No.1 – The Divisional Commissioner, Konkan Region, Fort, Mumbai thereby dismissing the Petitioner's Externment Appeal No.186/2023, are quashed and set-aside.

19) Petition stands disposed of in above terms. Rule is made absolute.

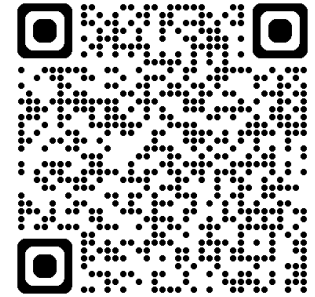
PREETI
HEERO
JAYANI

(SHYAM C. CHANDAK, J.)

Digitally signed by
PREETI HEERO
JAYANI
Date: 2024.10.26
18:01:37 +0530

Case Brief & MCQs on "Sher Abbas Haidar Abbas Siya v. Divisional Commissioner, Konkan Region" (2024:BHC-AS:42917) is available in the eBook:

"Bombay High Court Cases in October 2024"



The book "Bombay High Court Cases in October 2024" provides a comprehensive collection of Case Briefs & MCQs on 56 Recent Cases in the Bombay High Court. A wide range of legal areas is covered, including Criminal law, Civil law, Family law, Taxation, and Administrative law. Each case brief provides a structured summary, outlining the facts, procedural history, issues, rule of law, rationale, holding, and implications of the judgment. Readers will gain insights into the legal principles applied by the Court, along with their application. The MCQs reinforce key takeaways and encourage readers to engage actively with the material.

Author: Sagar Badade

Read the Book: <https://www.amazon.in/dp/B0DP5YYCB1>