

# Asif @ Asif Gando Mehbubmiya Shaikh vs State Of Gujarat on 28 August, 2019

**Author: A.Y. Kogje**

**Bench: A.Y. Kogje**

R/SCR.A/6824/2019

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6824 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE A.Y. KOGJE

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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ASIF @ ASIF GANDO MEHBUBMIYA SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR PAWAN A BAROT(6455) for the Applicant(s) No. 1

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2

MS. SHRUTI PATHAK, APP, (2) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 28/08/2019

ORAL JUDGMENT

1. Rule. Learned Additional Public Prosecutor waives service of rule on behalf of respondent-State.

2. Challenge in the present petition preferred under Articles 21 and 226 of the Constitution of India is the order dated 21.06.2019 passed by the respondent No.2-Assistant Commissioner of Police, "G" Division, Surat City in R/SCR.A/6824/2019 JUDGMENT Externment Order No.RB/HDP/49/2019, whereby the petitioner has been externed from Surat City and Surat Rural for a period of six months.

3. Heard the submissions of learned advocates appearing for the petitioner and learned APP for the respondent State.

4. The petitioner challenged the impugned order on various grounds that the externment order is passed without application of mind. According to the petitioner, the show cause notice issued to the petitioner dated 30.04.2019 is without application of mind, wherein the externing authority has mentioned that the petitioner should be externed from Surat City, Surat Rural, Navsari, Bharuch and Tapi districts for a period of two years. No reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner was confined only to the district of Surat.

5. Another contention has been that no reason has been given either in the show cause notice or in the impugned order of the externing authority why the petitioner was externed from so many districts mentioned above whereas he is resident of district Surat only. On all such grounds, learned advocate appearing on behalf of the of the petitioner prays to quash the impugned order.

6. This argument has substance and it discloses non- application of mind by the externing authority for externing the petitioner from the districts mentioned aforesaid. When even the externing authority chooses to direct externment from not only the district within which the person against whom the order is passed is seen to be active, but also from R/SCR.A/6824/2019 JUDGMENT contiguous districts, the reason why such externment order should operate even in regard to such contiguous districts should be shown in the notice preceding the order as well as in the order. It must be so, for if a person confined his activities to a particular district there would be no justification to extern him not only from that district, but from the adjoining district also unless it is shown that circumstances warrant such a course. If there is such lacuna in the show cause notice as well as in the impugned order, it is not for the court to fill up lacuna in the material noticed by the externing authority by assuming that there must be some reason for externing from contiguous district also. That must be indicated by the externing authority. For this full bench decision in Sandhi Mamad Kala v. State of Gujarat, reported in 14 G.L.R. 384 and Saiyad Husen Saiyad Umar vs. State of Gujarat, reported in 1985 (2) G.L.R. 1045 can be referred.

7. Per contra, learned APP submits that the competent authority has passed the impugned order after considering all the relevant materials and statement of witnesses as well as the fact that the petitioner is involved in other criminal offences, so as to demonstrate that there is likelihood of breach of peace in the area and therefore, the learned APP supported the impugned order and urged to dismiss the petition.

8. The show-cause notice came to be issued by the respondent No.2-Assistant Commissioner of Police, "G" Division, Surat City, calling upon the petitioner to show cause as to why the petitioner should not be externed from Surat City, Surat Rural, Navsari, Bharuch and Tapi Districts for a R/SCR.A/6824/2019 JUDGMENT period of two years. The petitioner gave his reply to the above show-cause notice denying all the allegations levelled in the said notice. However, the respondent authority without considering the defence of the petitioner passed the impugned order dated 21.06.2019 and externed the petitioner from Surat City and Surat Rural for a period of six months. The said order is served upon the petitioner on 22.06.2019 and order to get externed before 24.06.2019.

9. The order of externment would stand vitiated as while arriving on a subjective satisfaction and passing the order of externment, the externment authority has not only referred, but has also relied upon in all five offences of which four offences are of IPC, whereas one offence is of Prevention of Gambling Act mentioned in the impugned order. The submission of learned advocate that there appears non- application of mind as the offences which are shown in the impugned order are not pertaining to the IPC offences, but are offences registered under the provision of Prevention of Gambling Act. On the other hand, Section 57 of the Bombay Police Act is the relevant section to be invoked in cases, where offences of Gambling Act are involved. Over and above, the notice dated 30.04.2019 do not refer to any registered offence against the externee and therefore also the impugned order has travelled beyond the show-cause notice and has referred to and relied upon the material which was not brought to the notice of the petitioner by way of show-cause notice.

10. Submission of learned advocate that order of co- externee of the same offences has been quashed and set aside by this Court vide order dated 22.08.2019 passed in Special R/SCR.A/6824/2019 JUDGMENT Criminal Application No.6823 of 2019.

11. The externing authority under Section 56 of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is provided for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of Vrajlal Mohanlal v. District Magistrate, Rajkot and another, reported in 3 G.L.R. 807 can be referred on the point.

12. In view of the foregoing reasons, the petition is allowed. The order of externment dated dated 21.06.2019 passed by the respondent No.2-Assistant Commissioner of Police, "G" Division, Surat City in Externment Order No.RB/HDP/49/2019 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.Y. KOGJE, J) SIDDHARTH