

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.1221/2018

Aamna Bi Shiekh Pir Mohd Sheikh,
Aged about 50 years, Occ. Private.
R/o Near Garib Nawaz Masjid, Boriapura,
Nagpur.

..PETITIONER

--Versus ---

1. State of Maharashtra,
Through Deputy Commissioner of Police,
Zone-3, Nagpur.
2. Assistant Commissioner of Police,
Kotwali Division, Nagpur.

RESPONDENTS

Shri Mir Nagman Ali, Advocate for petitioner.
Shri S.S.Doifode, APP for respondents.

**CORAM : S.B.SHUKRE and
S.M.MODAK, JJ.**

DATED : 20.02.2019

ORAL JUDGMENT (Per S.B.Shukre, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. We find that even though the notice issued under Section 59 (1) of the Maharashtra Police Act, 1951 (hereinafter referred to as "The Act of 1951, for short) was issued in respect of proposed action for externment to be taken against the petitioner under the provisions of Section 56(1)clauses (a) and (bb), the externment order has been passed by resorting to only the latter clause of this provision of law, that is under Section 56(1)(bb) of the Act of 1951. The impugned order further shows that

even under clause (bb) of Section 56(1), what has been considered as relevant ground for externment by respondent no.1 is an activity considered by the authority as prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal Anti-Social and Other Dangerous Activities Act, 1980(hereinafter referred to as 'Anti-Social Act, for short) as provided under sub clause (i) of clause (bb) to section 56(1). This order does not rely upon the other sub clauses of Section 56(1)(bb) of the Act of 1951. So our scrutiny would be confined to only this provision of law and the inquiry into the question as to whether the activity of the petitioner which weighed with the respondent no.1 would fall squarely within the definition of maintenance of public order given under the Anti-Social Act or not.

3. Section 2(a) of the Anti-Social Act, defines the expression “acting in any manner prejudicial to the maintenance of public order”. In the instance case, the definition as given under Clause (iv) of Section 2(a) is relevant and it is reproduced as under :

Section 2. In this Act, unless the context otherwise requires,-

(a) “acting in any manner prejudicial to the maintenance of public

order means-

(i)

(ii)

(iii)

(iv) committing offences punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offences disturbs, or is likely to disturb, public orders.

A bare reading of clause (iv) reproduced above, would be sufficient for us to know what is contemplated under this definition. It is an activity which is continuous in nature and not something that is an isolated or a singular activity. This is

obvious from the use of plural form of noun offence. The noun is employed as “offences”. That would mean that there should be at-least more than one offence committed by the proposed externee for which the maximum punishment prescribed is of death or imprisonment for life or imprisonment for a term extending to 7 years or more. In addition to this requirement of law, other ingredient of the definition is that the offences registered against the externee must be of such nature as to be when committed would enable the authority to form an opinion that the commission thereof is likely to disturb or would disturb the public order. But, the latter ingredient would come into picture only after first part of the definition that is the commission of more than one offence having prescribed punishment as mentioned in this clause is completed. If first ingredient is not fulfilled, there would be no need for the authority to consider the other factor relating to disturbance of the public order.

4. Having considered in this manner the requirement of law, we find in the present case that there is only one offence out of the two offences minimum registered against the petitioner which qualifies itself falling in the category of clause (iv) of Section 2(a) of the Anti-Social Act viz. Crime No.295/2018 registered for the offences punishable under Section 20 and 21 of the Narcotic Drugs and Psychotropic Substances Act described on running page 9 of record. On perusal of the relevant provisions of the Narcotic Drugs and Psychotropic Substances Act(for short, NDPS Act), we find that for an offence under Section 20, relating to intermediate quantity of *ganja*, the minimum sentence prescribed is ten years while Section 29 pertains to abetment of offence and it is punishable with the punishment provided for the offence of which abetment is committed. Second offence registered vide Crime No.6055/2017 is under Section 20

read with Section 21 of the NDPS Act. The contraband article viz. *ganja* weighing 570 gms was seized in that case. It is admittedly a smaller quantity of the contraband substance for which maximum punishment prescribed is of six months' imprisonment. This offence would obviously not be covered by clause (iv) of Section 2(A) of the Anti-social Act. So what remains on record is only one offence attracting clause (iv). It is thus obvious that the impugned order sans subjective satisfaction on the part of the Externing Authority as contemplated under Section 56(1)(bb) and (ii) of the Act, 1951.

5. In these circumstances, we find that the impugned order does not explain any application of mind to relevant material available on record and is, therefore, bad in law and it must go.

6. In the result, the petition is allowed. The impugned order is hereby quashed and set aside.

7. Rule is made absolute in the above terms.

JUDGE

JUDGE

Andurkar..