

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 967 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

JASUBEN @ BHURIBEN WIDOW OF KANUBHAI DHANJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 967 of 2002
MR ASHISH M DAGLI for Petitioner No. 1
PUBLIC PROSECUTOR for Respondent No. 1
RULE SERVED for Respondent No. 2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

The petitioner has challenged two orders,
invoking the jurisdiction of this Court under Article 226
of the Constitution of India.

2. The first challenge is against the order of

externment passed by Respondent No.2 and the second one is the order of confirmation passed by Respondent No.3 whereby the authority has confirmed the order of externment in exercise of powers under Section 60 of the Bombay Police Act, 1951.

3.1 The petitioner has challenged the order of externment on number of grounds and confirmation thereof. However, during the course of oral submission, Mr. A.M.Dagli has concentrated his argument mainly on one ground and submitted that the order of externment passed by the authority is an order passed without application of mind. When it is apparent that the order is passed mechanically or without applying the mind, then such order cannot sustain in the eye of law. Such orders require to be quashed and set aside. It is also submitted by Mr. Dagli that the notice to show cause is materially vague. The first paragraph of notice to show cause served under the scheme of relevant Section 59 of the Bombay Police Act on 27th September, 2002.

3.2 It is mentioned that the petitioner-externee should show-cause and explain about his alleged involvement in the offences punishable under Sections 16 and 17 of IPC as authority was contemplating to take such activity as relevant for passing appropriate order under Section 56 of the said Act. Number of cases are also mentioned in the show-cause notice. Ten offences are mentioned, but none of the offences is punishable either under Chapter 16 or Chapter 17 of IPC. All the offences mentioned in the table are offences punishable under Bombay Prohibition Act and not under IPC.

4. In the same way, two witnesses have narrated two different incidents occurred on 11th November 2001 and 5th December, 2001. The notice to show-cause has been issued for the first time on 5th July 2002. There is unreasonable delay invoking the externment proceedings, which is also not explained by the authority in the order under challenge. It is true that while recording satisfaction detail reasons are not required to be given but once they are assigned and attempt is made then it should take care of all consequences emerging from record. Show-cause notice was responded by the petitioner vide written reply. It seems that the appellant authority while dealing with the appeal preferred under Section 60 has also not considered the element of vagueness and non-application of mind emerging from the notice to show-cause itself.

5. Mr. A.M.Dagli has placed reliance on a decision

of this Court in case of DAFER RAHMAN ZARAR V. STATE OF GUJARAT AND OTHERS, in Special Civil Application No. 865 of 1998 dated 1st December 1998 (CORAM : D.C.SRIVASTAVA,J - as he then was). I would like to quote the relevant para of the cited decision relevant for the purpose.

"The notice, annexure 'A' is further vague inasmuch as in para 2 thereof various activities of the petitioner have been disclosed but no date, time etc. so also place has been shown. It further appears that the Externing Authority has travelled beyond the allegations contained in the show cause notice. In the judgement the Externing Authority was influenced not only by two cases under section 323 etc. of the Indian Penal Code but also by four more cases viz. C.R.Nos. 109/95, 123/95, 87/96 and 110/97. While mentioning these criminal cases against the petitioner in the show cause notice, the Externing Authority did not disclose under which sections of the IPC these cases were registered against the petitioner, and further, since these cases were not shown in the show cause notice the petitioner was prevented from presenting effective defence to the show cause notice. This has rendered the order of the Externing Authority violative of principles of natural justice and it has also rendered the said order suffering from the vice of non application of mind. This is another ground on which the impugned order of the Externing Authority cannot be sustained. The order of the Externing Authority further suffers from the vice of non application of mind. When it is mentioned that earlier the offences have been registered and proved against the person though the aforesaid person is not stopping the aforesaid antisocial activities. In the show cause notice it was mentioned that these cases are pending. There was no material before the Externing Authority that these offences were proved. On the other hand the order of the Externing Authority shows that the stand of the petitioner before him was that he was acquitted in two criminal cases under the IPC. In respect of this stand the Externing Authority made no efforts to ascertain whether those cases were pending or resulted in conviction or acquittal which again renders the order of the Externing Authority bad on account of non application of mind to the material on record.

The order of the Externig Authority further suffers from the vice of non application of mind when he has mentioned that the petitioner has committed registered offences under chapters XVI and XVII of the IPC. Two C.R.Nos. 10/97 and 89/95 are under sections 323, 504 and 506(2) of IPC besides 447 and 337. The offence under sections 504 and 506(2) do not fall either under chapter XVI and XVII of the IPC. Remaining offence falls only under chapter XVI and not under chapter XVII of the IPC. Thus, it is mechanically mentioned in the order of the Externig Authority that the petitioner has committed offences punishable under chapter XVI and XVII of the IPC which has further rendered it illegal and invalid."

6. The order of appellate authority under challenge also suffers from the very infirmity and, therefore, both the orders requires to be quashed and set aside and therefore, they are quashed and set aside. Rule is discharged. Direct service is permitted.

(C.K.Buch,J)

Jayanti*