

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 208 of 2003

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?

NAVUBHA ALIAS NAVALSINH

FATUBHA CHUDASMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 208 of 2003
MR PRAFULL K PATHAK for Petitioner No. 1
MISS NANDINI JOSHI Ld. APP for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

Heard ld. counsel appearing for the petitioner

Mr. PK Pathak and ld. APP Miss Joshi for the respondents.

The petitioner has challenged the legality and validity of the order of externment passed by the Sub Divisional Magistrate, Dholka on 31.12.2002 and the order of confirmation dated 7.2.2003 passed by the Deputy Secretary, Home Department, State of Gujarat, in exercise of powers vested with him under sec. 60 of the Bombay Police Act, 1951.

The petitioner has challenged the legality and validity of both these orders on number of grounds referred to in the memo of petition. The ld. counsel has concentrated his arguments mainly on two grounds. The first ground taken up by the ld. counsel is that the even as per the show-cause notice, two minor offences have been registered against the present petitioner in Dhandhuka Police Station and because of the registration of such offences, the harsh step of externment normally cannot be taken in view of the scheme of sec. 56 read with sec. 49 of the Act. The first offence registered allegedly committed under sec. 323, 504 and 506(2) read with sec. 114 of IPC and under sec. 135 of the Bombay Police Act. The second offence registered with the same police station is punishable under sec. 504, 506(2), 186 read with section 114 of IPC. The petitioner has been enlarged on bail by the competent court. Three chapter cases have been registered and it is in the notice itself that the petitioner has executed surety bond as desired by the Executive Magistrate in the proceedings initiated under sec. 107 of CrPC. It is clarified that both these chapter cases have been registered mainly because of above referred two offences registered with the Dhandhuka Police Station. Even for the sake of arguments, it is accepted that he is really involved in these offences registered with the Dhandhuka Police Station, even then there was no reason to serve with show cause notice asking the explanation as to why he should not be externed from the entire Ahmedabad district and adjacent districts. It was possible for the authority to extern this petitioner from the area of Dhokla Sub Division only. The second point argued by the ld. counsel is that the notice to show cause and the proceedings initiated is politically motivated. The petitioner was once a Sarpanch of Tagdi village Panchayat from 1995 to 2002. The family of the petitioner are agriculturists and having about 500 vighas of lands and at present he is a member elected of village Panchayat Tagdi. He is in various committee of the Panchayat. It is submitted that the externment order is passed only with a view to see

that the petitioner under the legal disability remains absent in the General Meeting of Gram Panchayat and he may be declared as disqualified or the seat can be declared as vacant on his continuous absent from the meeting.

In response of the query raised by the court, ld. APP has submitted that the proceedings under sec. 151 of CrPC was also initiated and the order passed by the authority being reasoned order should not be disturbed.

I have gone through the order passed by the externing authority in reference to the notice to show cause and the second order under challenge passed by the appellate authority. These orders are missing justification. The provisions under sec. 56 read with sec. 59 are preventive measures and when it is apparent that the present petitioner is a responsible citizen and is a Ex-Sarpanch, than his involvement in two minor offences can be ignored because with political motivation somebody may be approached to the Externing Authority to initiate some proceedings. It is difficult to accept that the petitioner is such a head strong person and externment is the only preventive measures. On facts, the order is found bad and, therefore, requires to be quashed and set aside. Obviously, when the order of externment is found bad, its confirmation by the appellate authority cannot be sustained.

In the result, this petition is allowed. The impugned orders passed by the Sub Divisional Magistrate, Dholka dated 31.12.2002 and confirmed by the appellate authority by order dated 7.2.2003 are hereby quashed and set aside. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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