

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 671 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
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?

YUSUF AHMEDBHAI CHHIPA THRO' HIS FRIEND YAKUBBHAI CHHIPA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 671 of 2003
MR RJ GOSWAMI for Petitioner No. 1
MR LR PUJARI Ld. APP for Respondents
-

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. Heard Mr.R.J.Goswami, learned advocate for the
petitioner and Mr.L.R.Pujari, learned APP for the
respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the externment order dated 3.2.2003 (Annexure-B) passed by the respondent no.2 and the order dated 22.4.2003 (Annexure-C) by respondent no.1 in Externment Appeal No.31 of 2003.

3. It is suggested that the petitioner - externee was served with show cause notice dated 27.5.2002 (Annexure-A) under Section 59 of the Bombay Police Act (hereinafter referred to as "the Act"). The petitioner examined witnesses and also filed reply to the show cause notice. Thereafter, the impugned order of externment (Annexure-B) came to be passed by respondent no.2 externing the petitioner from the area under the jurisdiction of Police Commissioner for the city of Ahmedabad and the contiguous district Ahmedabad (Rural), Gandhinagar, Kheda and Mahesana. In the show cause notice (Annexure-A), it is alleged that the petitioner from December, 2001 onward has been himself and with the help of his associates has been purchasing the necessities of life on credit from the businessmen in the Astodia Chakla, Kaji Na Dhaba, Motabamba and Gol Limbda area in the city of Ahmedabad and after the purchasing these necessities of life on credit, on demand of the money by the traders for the same the petitioner and his associates have been beating the businessmen and have also been threatening with deadly weapon knives Rampuri and razor etc. It is also alleged that the petitioner has been collecting installments from the businessmen in the aforesaid areas and those who refused to give installments, are beaten and threatened for life by show of deadly weapons like knife. It is also alleged that the petitioner and his associates have been taking auto rickshaw from Astodia Chakla and go to Vatva and after returning, not paying the legitimate fair and on demand for the rickshaw fair, the petitioner and his associates have been beating the rickshaw people and threatening them to kill by showing deadly weapon like knife. It is also alleged that in Gaeyakwad Haveli Police Station I.C.R. No.011/2002 under Section 307, 332, 337, 435, 323, 186, 427, 143, 147, 148 and 149 of IPC and under Section 307 of the Damage to the Public Property Act has been registered.

4. It is submitted by Mr.Goswami, learned advocate for the petitioner that in the show cause notice as well as in impugned order the substratum of the statements of the witnesses recorded in-camera have not been stated and show cause notice only contains bare vague allegations as

regards the activities allegedly indulged by the petitioner. It is further stated that in absence of the substratum of the statements of the witnesses recorded in-camera in the show cause notice, no effective representation could be made by the petitioner as regards the activity / acts alleged against him.

5. In this regard, reliance has been place on the decision reported in the case of Ajit Nathuram Patil Panchpakhadi, Thane Vs. The State of Maharashtra, [1999] Cr.L.R. (Mah.) 257. The Division Bench of the Bombay High Court while dealing with the case under Section 56(B) of the Bombay Police Act observed in Para.4 that "the Externing Authority had also collected in-camera statements of witnesses whose names have been kept anonymous. It is alleged in the show cause notice that from the in-camera statements of certain witnesses and from pending cases, it is feared that the citizens are not willing to come forward in public to depose against the petitioner. If such statements recorded in-camera were available with the Externing Authority, then it was necessary for the Externing Authority to have given general particulars of those various statements recorded in-camera to the petitioner to enable him to effectively show cause against the same. We find that this is a material infirmity and the authority have committed serious breach of the procedure regarding the principles of natural justice.

6. Mr.Goswami, learned advocate has placed on record the copies of the statements of two witnesses recorded on 15.1.2002 in connection with the case under IPC referred to in the show cause notice which is pending trial. It is further submitted that if these witnesses could give statements in public against the petitioner and when in show cause notice it is stated that the witnesses are not willing to come forward and give statements against the petitioner in public as regards the acts alleged from December,2001, then in that event all what can be said is that the impugned order as regards the witnesses not willing to come forward to give statements against the petitioner is without application of mind.

7. The show cause notice (Annexure-A) admittedly does not refer to the substratum of the statements of the witnesses recorded in-camera. Only usual statement has been made in the show cause notice that witnesses are not willing to come forward for the fear of danger to their life and property. In absence of a material suggesting if available with the Externing Authority against the petitioner, then in that event it would be necessary for

the Externment Authority to have given general particulars / substratum of the statements of the witnesses recorded to enable the petitioner to effectively show cause against the allegations levelled against him in the show cause notice. Neither in the show cause notice nor in the impugned order there is any reference to recording of the statements of any witnesses for reaching the subjective satisfaction as regards the other witnesses / persons other than the victims.

8. In the above view of the matter, the impugned order dated 3.2.2003 (Annexure-B) passed by the respondent no.2 and the order dated 22.4.2003 (Annexure-C) passed in the Appeal No.31 of 2003 by the respondent no.1 are liable to be quashed and set aside.

9. In view of the above, this petition is granted and accordingly allowed. The impugned order of externment (Annexure-B) dated 3.2.2003 passed by respondent no.2 and the impugned order (Annexure-C) dated 22.4.2003 passed by respondent no.1 are hereby quashed and set aside. Rule made absolute. Direct service is permitted.

(N.G.Nandi,J.)
(vipul)