

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CRIMINAL APPLICATION No. 387 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA**

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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, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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**DHIRAJ SINH LAXMAN SINH BARIA - Applicant(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR ASHISH M DAGLI for Applicant(s) : 1,  
Mr. I.M. Pandya, A.P.P. for Respondent(s) : 1,  
RULE NOT RECD BACK for Respondent(s) : 2,  
RULE SERVED for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**

**Date : 13/05/2005**

**ORAL JUDGMENT**

1. By way of filing this application, the petitioner has challenged the order dated 28<sup>th</sup> September, 2004 passed by the Deputy Police Commissioner, Zone-5, Ahmedabad, in exercise of powers conferred upon him under Section 56(b) of the

Bombay Police Act, 1951 to extern the petitioner for two years from the Districts of Ahmedabad city and contiguous districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana. The petitioner preferred a statutory appeal against the order passed by the externing authority in pursuance of Section 60 of the Bombay Police Act, 1951. The Appellate Authority, however, vide his order dated 11<sup>th</sup> March, 2005 modified the order passed by the externing authority to the extent that instead of externing the petitioner, the Appellate Authority to afforded an opportunity to improve petitioner directed the petitioner to furnish personal bond of Rs.20,000-00 and surety of Rs.25,000-00 for keeping good behaviour for two years. Both the orders including show cause notice issued are challenged in this petition.

2. The facts of the case, discloses that a show cause notice under Section 59(1) of the Bombay Police Act, 1951 was issued against the petitioner by the Assistant Police Commissioner, “K” Division, Ahmedabad City, exercising powers under Section 56(b) of the Bombay Police Act, 1951, stating that the petitioner was headstrong, ferocious and of violent temperament and was causing harm to the public peace and law and order. The concerned authority took into consideration seven incameara statements of the witnesses and two crimes registered against the petitioner before Shahibaug Police Station, vide C.R.No.10/2002 for the offences punishable under Sections 143, 147, 148, 149, 323 and 294(b) of the Indian Penal Code, while second crime was registered by C.R.No.279/2003 for the offences punishable under Sections 323 and 324 of the Indian Penal Code. Vide show cause

notice, taking into consideration materials as aforesaid, the concerned authority concluded that in the area of Shahibaug, especially in the back side of Rajasthan Hospital, the petitioner was carrying on nefarious activities, which were required to be prevented forthwith and hence, the show cause notice was issued. In response to the show cause notice, the petitioner appeared before the competent authority and ultimately, vide order dated 28<sup>th</sup> September, 2004, the Deputy Police Commissioner, Zone-5, Ahmedabad city being competent authority passed the order that the petitioner was required to be externed for two years from the above mentioned districts. As aforesaid, the appeal resulted in modification of the order, as stated hereinabove.

3. Learned advocate Mr.A.M.Dagli for the petitioner and learned APP Mr.I.M.Pandya for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner to challenge both the orders, as opposed and controverted by the learned APP, it appears that this application can be examined and disposed of, on the sole issue as to whether the orders under challenge suffer vice of non-application of mind and are liable to be quashed on that ground.

5. Learned advocate for the petitioner tenders on record a certified copy of the judgment in Summary Case No.199/2002 tried by the learned Metropolitan

Magistrate, in pursuance of a crime registered against the petitioner being C.R.No.10/2002, before Shahibaug Police Station. The said xerox copy of the certified copy of the judgment delivered by the Metropolitan Magistrate and tendered by the learned advocate for the petitioner is taken into consideration. Accordingly, in the said C.R.No.10/2002, the petitioner was tried by the Metropolitan Magistrate, Court No.2, Ahmedabad in Summary Case No.199/2002 and petitioner was acquitted of the charges on 15<sup>th</sup> September, 2003 as stated by the learned advocate for the petitioner. The situation, therefore, has arisen that on the day of issuance of the notice under Section 59(1) of the Bombay Police Act, 1951, in C.R.No.10/2002, the petitioner was acquitted. Meaning thereby that the externing authority as well as the authorities who issued show cause notice both took into consideration a criminal case filed against the petitioner in which he was acquitted even before issuance of the show cause notice.

6. The facts of this case are squarely covered by a decision of the Division Bench of this Court in the matter of SULEMAN HUSA DEVJI v. STATE OF GUJARAT & ANR, as reported in 1989 (1) G.L.R. 101. This Court observed as under, in paragraph No.4.

“4. From the foregoing discussion, it is clear the externing authority has not applied its mind to a very relevant circumstance, which would have shown that witnesses are forthcoming for the purposes of giving evidence against the petitioner. On the other hand, the externing authority has mechanically applied

its mind and has wrongly stated that the case registered at Crime Register No.58 of 1986 is pending trial. The fact clearly reveals that the said Crime Register No. 58 of 1986 was tried by the Court and the petitioner has been acquitted in that case. This is a clear case of non-application of mind by the externing authority and it also spells out the mechanical way in which the externing authority has passed the order of externment. This single instance itself is sufficient to quash the order of externment. In view of this glaring mistake committed by the externing authority, it is not necessary for us to go into the other contentions such as failure of natural justice, mala fides and denial of opportunity to hear the witnesses.”

7. In view of the above, it is apparent that the externing authority has not applied its mind to very relevant circumstances, because in the said crimes registered, the petitioner was acquitted and mechanically issued not only show cause notice but passed the order of externment against the petitioner taking into consideration the case in which the petitioner was much earlier acquitted. The order of the Appellate Authority modifying the order of externing authority appears to be illegal and without jurisdiction on face of it. There is no provision in the Bombay Police Act, 1951, either externing authority or the Appellate Authority to accept surety and personal bond in lieu of passing the order of externment. Therefore, the order passed by the externing authority on 28<sup>th</sup> September, 2004 as well as the order passed by the Appellate Authority on 11<sup>th</sup> March, 2005 both orders are required to be quashed and set aside on this ground alone.

8. In the result, the Special Criminal Application is allowed. The impugned externment order passed by the Deputy Police Commissioner, Zone-5, Ahmedabad on 28<sup>th</sup> September, 2004 and the order passed by the Appellate Authority on 11<sup>th</sup> March, 2005 both are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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