

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CRIMINAL APPLICATION (AGAINST ORDER OF
EXTERNMENT) NO. 3225 of 2013**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G.SHAH

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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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DHIRUBHAI KHIMJIBHAI MER THRO' AMIT DHIRUBHAI MER....Applicant(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

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Appearance:

MR BHAVIN S RAIYANI, ADVOCATE for the Applicant(s) No. 1
MS MOXA THAKKAR, APP for the Respondent(s) No. 1 - 4

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CORAM: HONOURABLE MR.JUSTICE S.G.SHAH

Date : 25/10/2013

ORAL JUDGMENT

The petitioner was externed from the

districts of Rajkot city, Rajkot [Rural], Surendranagar, Jamnagar, Junagadh and Amreli for a period of two years by virtue of order passed on 23/7/2013 by the Deputy Police Commissioner, Rajkot City, in exercise of powers under sections 56(b) of the Gujarat Police Act ("the Act" for short). It was found that the petitioner-externee committed breach of that order and entered Rajkot city time and again. Therefore, Deputy Police Commissioner, Rajkot city, passed order on 23/7/2013 against the petitioner-externee in exercise of section 62(2) of the Act and directed that the petitioner be arrested and kept police custody at Surat jail. It is this order, that has given cause for the present petition which is filed by the petitioner.

2 The petition is based mainly on the ground that the order is ex-facie illegal, passed without jurisdiction and outcome of of misreading of the provisions of the law.

3 Attention of this Court is drawn to section 62 of the Act and it is stated that the power with which the authority is invested is only of causing the breaching externee arrested and removed in police custody to a place outside the area as the authority may prescribe. In the instant case, the authority has caused the petitioner arrested and has placed him in Palanpur Jail till 14/10/2014 and, therefore, the order is without jurisdiction and in gross misreading of the provisions of law.

4 Ld. Advocate Mr. Bhavin Raiyani for the petitioner has relied upon the following judgments [i] Rameshji Panchaji Thakore v/s. State of Gujarat reported in 2000 [3] G.L.H. 280, [ii] Gopaslji Laxmanji Rathod v. State of Gujarat reported in 2001 [3] G.L.R. 2663 and [iii] judgment rendered by this Court in Special Criminal Application No. 603 of 2006 dated 21/7/2006.

5 Ms. Moxa Thakkar, learned APP has appeared for the respondents. It is submitted by Ld. APP that the terminology used in sub-section [2] of section 62 that - "*..... to be arrested and removed in police custody to such place outside the area*", empowers the competent authority to place the externee in custody outside the area of externment.

6 Considering the contentions raised before this Court, it is very clear that the externing authority is empowered to take action under section 62 (2) of the Police Act against an externee on breach of externment by the externee. This provision runs as under.

"62. Procedure on failure of person to leave the area and his entry therein after removal -

(1) If a person to whom a direction has been issued under section 55, 56 or 57 to remove himself from an area -

(i) fails to remove himself as directed, or
(ii) having so removed himself, except with the permission in writing of the authority making the order as provided in sub-section (2), enters the area within the period specified in the order, the authority concerned may cause him to be arrested and removed in police custody to such place outside the area as the said authority may in each case prescribe.

(2) The authority making an order under section 55, 56 or 57 may in writing permit any person in respect of whom such order has been made to enter to return to the area, including any contiguous districts or part thereof, from which he was directed to remove himself, for such temporary period and subject to such conditions as may be specified in such permission and may require him to enter into a bond with or without surety for the due observance of the conditions imposed. The authority aforesaid may at any time revoke at any time such permission. Any person who with such permission enters or returns to such area shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to enter or return, or on the earlier revocation of such permission, shall remove himself outside such area, or the area and any contiguous districts or part thereof, and shall not enter therein or return thereto within the unexpired residue of the period specified in the original order made under section 55, 56 or 57 without a fresh permission. If such person fails to observe any of the conditions imposed, or to remove himself accordingly, or having so removed himself enters or returns to the area, or the area

and any contiguous district or part thereof, without fresh permission, the authority concerned may cause him to be arrested and removed in police custody to such place outside the area as that authority may in each case prescribe."

The authority therefore, has power, under this provision, to get the breaching externee arrested and removed under the police custody to a place outside the area. The section does not, in any manner invest the externing authority with power of continuing the breaching externee in custody even after removal from the area. It would be erroneous to read and interpret the said provision to empower the externing authority to send the breaching externee to jail as has been done. If this interpretation is accepted, it would amount to making the provisions of Sec. 142 of the Gujarat Police Act redundant, which provide for punishment for breach of externment order.

6.1 Likewise, such interpretation of Sec. 62(2) of the Gujarat Police Act would render provision of Sec. 167 of Criminal Procedure Code nugatory.

6.2 Sending a man to prison for a period of two years, without trial, as has been done is more harsh than provisions for preventive detention, where law provides detention upto six months, one

year or two years as the case may be. There also, checks and guards are provided by law to protect the liberty of detainee against possible misuse. The law makers could not be taken to have intended such interpretation while incorporating Sec. 62(2) of the Gujarat Police Act.

6.3 The interpretation adopted while passing the impugned order is against the basic principles of natural justice and criminal jurisprudence. The order could not have been passed without affording opportunity to the externee of being heard. A plain reading of the impugned order indicates clear breach of this canon of criminal jurisprudence.

6.4 It is also brought to the notice of the Court that an offence is registered against the petitioner under Section 142 of the Gujarat Police Act for breach of the externment order. Thus, for the act of breach of externment order, proceedings are initiated. The petitioner would be dealt with in accordance with law and will be punished therefor if found guilty. As such, the impugned order of putting the petitioner in jail for two years can be said to be an order of punishment without adjudication and therefore it requires to be quashed by allowing this petition.

6.5 One more adverse effect of the impugned order, if sustained, would be that the petitioner would be punished twice, for the same act of committing breach of externment order, if ultimately he is convicted in proceedings under section 142 of the Gujarat Police Act. This also cannot be permitted to happen.

7 Section 62 of the Act does not refer to continue the custody and thereby to detain the externnee after such removal. Therefore, though arrest and removal in police custody is permissible, after such removal, detention is not permissible, more particularly there is provision under section 142 of the Act to initiate proceedings and to penalize the externnee for disobedience of order of externment wherein minimum punishment is prescribed as six months. Therefore, it would be appropriate for the competent authority to initiate proceedings under section 142 of the Act after removal of the externnee from the area of externment, but the order of detention cannot sustain.

8 For the reasons stated above, the impugned order directing the externnee to be kept in Palanpur jail for a period till 2/9/2014 is without authority or jurisdiction.

9 The present petition is allowed. The orders impugned in this petition i.e. the orders dated 23/7/2013 passed by the Deputy Police Commissioner, Rajkot City, in exercise of powers under Section 62(2) of the Act is hereby quashed and set aside. The petitioner - Dhirubhai Khimajibhai Mer, be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(S.G.SHAH, J.)

* Pansala.