

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CRIMINAL APPLICATION (AGAINST ORDER OF
EXTERMENT) NO. 5050 of 2015**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.H.VORA

=====

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 or any order made thereunder ?	

=====

SANTOSH @ SANTOSH BIHARI SANDHU SARAN RAJPUT....Applicant(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

=====

Appearance:

MR. JARJEESKHAN, ADVOCATE for the Applicant(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 1

MR LB DABHI APP for the Respondent(s) No. 3

=====

CORAM: HONOURABLE MR.JUSTICE S.H.VORA

Date : 30/10/2015

ORAL JUDGMENT

1. By way of this petition under Articles 14, 19, 21, 226 and 227 of the Constitution of India, the petitioner challenges order dated 23.06.2014 passed by the respondent No.2 in Externment Case No.120-13 of 2014 and also order dated 22.07.2015 passed by respondent No.1 in Externment Appeal No.113 of 2015 whereby, the petitioner came to be externed from the local limits of Rural area of Surat district for 18 months.

2. Briefly stated, respondent No.2 initiated proceedings under Section 56(B) of the Bombay Police Act, 1951 (for short, the 'Act') and sought removal of petitioner from his native district and other adjoining districts and the petitioner was served with show cause notice dated 16.07.2013. While issuing notice, respondent No.2 noted fact of registration of offences with Limbayat police station and other offences registered against the petitioner but, in the notice itself, the respondent No.2 observed and recorded that such criminal record is nothing to do with the externment of the present petitioner. It is further stated in the notice that if any other offences, in which, the present petitioner is arrayed as an accused by any Court, then, he would be externed from 7 districts.

2.1. Though, the petitioner opposed such show cause notice and is externed on such ground, respondent No.2 removed petitioner from as many as 7 districts for a period of two years from the date of service of order.

3. Being aggrieved and dissatisfied with the said order, the petitioner filed appeal before respondent No.1 as provided

under Section 60 of the Act. Vide order dated 22.07.2015, respondent No.1 partly allowed the said appeal and ordered the petitioner to remain beyond the limits of Rural areas of Surat District for a period of one and half year.

4. Learned advocate for the petitioner would contend that the respondent authorities have exceeded the jurisdiction vested in them while exercising powers under Sections 56(B) and 60 of the Act respectively inasmuch as, the impugned orders are cryptic and non-speaking orders. Learned advocate for the petitioner would contend that after issuance of show cause notice, the order of externment came to be passed after delay of one year and, therefore, such delay vitiates the order of externment. The learned advocate for the petitioner would further contend that the petitioner has not been convicted in any of the cases and though, all the matters were pending at the relevant time and though, not considered by the competent authority while issuing show cause notice, yet, the petitioner is ordered to be externed from the local limits of Rural areas of Surat District.

5. Per contra, learned A.P.P. Mr.Dabhi, while supporting impugned orders, relying upon the affidavit-in-reply filed by the respondent authorities, contended that the impugned orders have been passed in view of settled legal position and considering the scope of Sections 56(B) and 60 of the Act. He, therefore, urged to dismiss the present petition.

6. Having heard the submissions made at bar and considering the impugned show cause notice, it is quite evident that the respondent No.2, though referred to three offences registered against the petitioner but, it did not rely

upon such offences and further, noted that issuance of show cause notice, based on such offences, has nothing to do with the present proceedings and if the above offences are excluded from consideration, then, there is nothing on record to indicate or to show as to why the competent authorities thought it fit to extern the petitioner from his native district and other districts.

7. In light of this position, it is evident that the impugned show cause notice itself is vague and issued on the basis of assumptions and presumptions and, therefore, consequential orders passed by both the respondent authorities deserve to be quashed and set aside.

8. For the forgoing reasons, the petition is allowed. The order dated 23.06.2014 passed by the respondent No.2 in Externment Case No.120-13 of 2014 and also order dated 22.07.2015 passed by respondent No.1 in Externment Appeal No.113 of 2015 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service today is permitted.

(S.H.VORA, J.)

Hitesh