

BHAGUBHAI DULLABHABHAI BHANDARI

v.

THE DISTRICT MAGISTRATE, THANA
& OTHERS

(with connected petition)

[S. R. DAS C. J., JAGANNADHADAS, VENKATARAMA
Ayyar, B. P. SINHA and JAFER IMAM JJ.]

Bombay Police Act, 1951 (Bombay Act XXII of 1951), s. 56—Constitutional validity—Order of externment—Restrictions—Reasonableness—"Witness", scope of the word in the section—Whether not applicable to members of the police force or customs department—Constitution of India, Art. 19.

Section 56 of the Bombay Police Act, 1951, is not unconstitutional and does not contravene the provisions of Art. 19 of the Constitution.

Gurbachan Singh v. State of Bombay ([1952] S.C.R. 737), followed.

In order to attract the operation of the section the Officer concerned should be satisfied that the witnesses are not willing to come forward to give evidence in public, but it is not necessary to show that all the witnesses are unwilling to give evidence. The terms of the section do not justify any restricted meaning being given to the word "witnesses" and it is applicable to members of the police force and employees and officers of the Customs Department also.

Gurbachan Singh v. State of Bombay ([1952] S.C.R. 737), explained.

Under the provisions of s. 56 of the Bombay Police Act, 1951, an order of externment was passed against the petitioner by which he was directed to remove himself outside the limits of Greater Bombay and not to enter the said area for a period of two years without the prescribed permission; and subsequently he entered Greater Bombay in order to attend Court in a case pending against him in which a warrant of arrest had been issued. He was convicted for committing the breach of the externment order and he contended that his conviction was in itself an indication of the unreasonableness of the restriction.

Held, that the restrictions cannot be said to be unreasonable, as the petitioner could have avoided the prosecution and the conviction by obtaining the previous permission of the prescribed authority.

Per JAGANNADHADAS J.—If the matter were *res integra* I should have felt difficulty in upholding the validity of s. 56(b) of

1956

May 8

1956

Bhagubhai
Dullabhabhai
Bhandari

v.

The District
Magistrate, Thana
and others

the Bombay Police Act, 1951, in so far as it did not demarcate the application thereof to the more serious classes of offences falling within the specified Chapters. I should also have felt difficulty in holding a provision to be reasonable which clothes the executive officers with an authority to extern a person for so long a period as two years.

ORIGINAL JURISDICTION: Petitions Nos. 439 & 440 of 1955.

Petitions under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

H. J. Umrigar and *R. A. Govind*, for the petitioner in Petition No. 439 of 1955.

J. B. Dadachanji, for the petitioner in Petition No. 440 of 1955.

M. C. Setalvad, *Attorney-General of India*, *B. Sen* and *R. H. Dhebar*, for the respondents.

1956. May 8. The judgment of S. R. Das C. J. and Venkatarama Ayyar, B. P. Sinha and Jafer Imam JJ. was delivered by Sinha J. Jagannadhas J. delivered a separate judgment.

SINHA J.—These petitions under article 32 of the Constitution challenge the constitutionality of some of the provisions of the Bombay Police Act, XXII of 1951 (which hereinafter will be referred to as “The Act”), with special reference to section 56, as also of the orders passed against them externing them under that section of the Act.

In Petition No. 439 of 1955 Babubhai Dullabhbhai Bhandari is the petitioner and the District Magistrate of Thana, the Deputy Superintendent of Police and Sub-Divisional Police Officer, Bhivandi Division, Bhiwandi, District Thana, and the State of Bombay are respondents 1, 2 and 3. The petitioner is a citizen of India and carries on trade in grass at Bhilad, a railway station on the Western Railway. On 21st January 1955 the Deputy Superintendent of Police and Sub-Divisional Police Officer, Bhiwandi Division, served a notice under section 56 of the Act in the following terms:—

“

No. Ext. 3/1 of 1955

Office of the S.D.P.O. Bhiwandi,
Bhiwandi, dated 21-1-1955.

(I) I, Shri C. V. Bapat, Deputy Superintendent of Police and Sub-Divisional Office Bhiwandi Division, District Thana, do hereby issue a notice to you, Shri Bhagu Dubal Bhandari alias Bhagwanbhai Dulla Bhai Jadhav of Bhilad District Thana, that it is proposed that you should be removed outside the District of Thana and you should not enter or return to the said district for a period of two years from the date of the order to be made under section 56 of the Bombay Police Act, 1951 for the following reasons:—

(II) Evidence is forthcoming that your following activities have caused and are calculated to cause alarm, danger and harm to person and property in Bhilad and the surrounding areas:—

(1) You have been dealing in smuggled foreign liquor and maintained a veil of secrecy by criminal intimidation and physical violence to the villagers and other right thinking persons.

(2) Your activities have been in continuation of your similar activities for the last five years, given as under:—

(a) You criminally assaulted persons with the help of your associates and did violent acts in order to strike terror into the hearts of the villagers, so that they should not challenge you or your men.

(b) You have been criminally assaulting and intimidating Central Excise and Custom officials with the help of your gang, so as to stop them from looking into your anti-national, anti-social and illegal activities. As a result of your unlawful and dangerous activities you are held in terrific awe by the Central Excise and Custom Officers and men and villagers in Bhilad area who are continuously labouring under grave apprehension of danger to their person and property.

(c) You and your associates were and are making use of criminal intimidation against the villagers in order to prevent them from having recourse to legal means.

1956

*Bhagubhai
Dullabhabhai
Bhandari*

v.

*The District
Magistrate, Thana
and others*

Sinha J.

1956

*Bhagubhai
Dullabhabhai
Bhandari*

v.

*The District
Magistrate, Thana
and others*

Sinha J.

(III) That you and your associates are also understood to be in possession of unlicensed firearms which has been causing considerable alarm and spreading a feeling of insecurity of life and property in the mind of villagers from Bhilad and neighbouring villages and Central Excise and Customs employees.

(IV) The witnesses are not willing to come forward and to give evidence against you by reason of apprehension of danger and harm to their person and property.

(V) Now, I Shri C. V. Bapat, Deputy Superintendent of Police and Sub-Divisional Police Officer, Bhiwandi Division, District Thana in exercise of the authority conferred upon me under section 59 of the Bombay Police Act, 1951 by the District Magistrate Thana under his number MAG. 2/ EX dated 17-1-1955 do hereby direct you to appear before me at 11 a.m. on 27-1-1955 at Dahanu in the office of the Sub-Divisional Police Office Dahanu for tendering your explanation regarding the said allegation. You are also entitled to appear before me by advocate for the purpose of tendering your explanation and examining witnesses, produced by you.

Signed and sealed this day of 21st Jan. 1955.

Sd.

Deputy Superintendent of Police &
Sub-Divisional Police Officer, Bhiwandi.

To

Shri Bhagu Dubal Bhandari @ Bhagwanbhai
Dullabhai Jadhav of Bhilad, District Thana".

By that notice the petitioner was called upon to appear before the said police officer on the 27th January 1955 in order to enable the former to offer such explanation and examine such witnesses as he may be advised. In pursuance of that notice the petitioner appeared before the police officer aforesaid and the hearing of his case took place on different dates. The petitioner claims to have examined seven "respectable persons" to testify on his behalf. Ultimately on the 11th July 1955 an order was passed by the District Magistrate of Thana externing the petitioner outside the Thana District. The order of

externment is Ex. D to the petition and contains the recitals that after considering the evidence before him and the explanation offered by the petitioner the District Magistrate of Thana (the 1st respondent), was satisfied that the petitioner "engages in giving threats and assaulting Central Excise and Customs Officials men and residents of Bhilad and surrounding villages and indulges in illicit traffic of foreign liquor from Daman" and that in his opinion "witnesses are not willing to come forward to give evidence in public against the said Shri Bhagubhai Dullabhbbhai Bhandari alias Bhagwanbhai Dullabhbbhai Jadhav of Bhilad by reason of apprehension on their part as regards the safety of their person and property". It is this order which is challenged as illegal and *ultra vires* and against which the petitioner has moved this Court for an appropriate writ, direction or order against the respondents, prohibiting them, their servants and agents from acting upon or taking any steps in enforcement, furtherance or pursuance of the said order and from interfering in any manner with the petitioner's right to reside in Bhilad and carry on his business. The petitioner had preferred an appeal to the Government against the said order of externment. But the appeal was dismissed on the 9th September 1955. Against the said order the petitioner moved the High Court of Judicature at Bombay under article 226 of the Constitution, but the said application was also dismissed *in limine* by the High Court by its order dated the 7th November 1955.

The District Magistrate of Thana, the 1st respondent has sworn to the affidavit filed in this Court in answer to the petition. He swears that he had passed the externment order complained against after perusing the police reports and going through the explanation offered by the petitioner and the statements of the witnesses produced by him and on hearing his advocate. He further states in the affidavit that the general nature of the material allegations against the petitioner was given to him, that the material given to him was clear and by no means vague. Only the names of the persons who had given the

1956

Bhagubhai
Dullabhbbhai
Bhandari

v.

The District
Magistrate, Thana
and others

Sinha J.

1956

*Bhagubhai
Dullabhabhai
Bhandari*

v.

*The District
Magistrate, Thana
and others*

Sinha J.

information against the petitioner were not disclosed to him inasmuch as those persons were not prepared to come out in the open and depose against him in public as witnesses. He was satisfied that witnesses were unwilling to come forward to give evidence in public against the petitioner. He also affirms that the petitioner's movements and acts were not only causing alarm, danger or harm to personal property of the general public round about Bhilad, but also that his movements and acts were causing danger and alarm to public servants of the police force and the Central Excise who were doing very responsible work at Bhilad which is on the borderline of the Indian territory adjoining Daman area which is Portuguese territory. He admits that the petitioner was discharged by the Judicial Magistrate, First Class, Umbergaon because the witnesses did not appear and depose against him for fear of the petitioner.

In Petition No. 440 of 1955, Kunwar Rameshwar Singh is the petitioner and the respondents are—

1. Shri W. K. Patil, Deputy Commissioner of Police, Crime Branch (I) C.I.D., Greater Bombay,
2. The Commissioner of Police, Greater Bombay, and
3. The State of Bombay.

The petitioner is a citizen of India and claims to be a "social worker" connected with several social organisations. He alleges that his main social activity has been the improvement of the lot of prostitutes and singing girls in certain quarters of Bombay. On the 2nd November, 1954 the petitioner was served with a notice under section 56 read with section 59 of the Act (Ex. A to the petition) setting out the allegations against him and calling upon him to explain those matters. In pursuance of the said notice the petitioner appeared before the Superintendent of Police to show cause against the proposed action against him. Ultimately on the 4th January, 1955 the Commissioner of Police, the second respondent, passed an order to the effect that the petitioner should remove himself from the limits of Greater Bombay

within seven days. That order is marked Ex. H and is to the following effect:—

“ Order of Externment

(Section 56 of the Bombay Police Act, 1951)

Police Station: Nagpada

No. 7/c/43/1955.

Whereas the Commissioner of Police, Greater Bombay, has directed by his order, dated the 13th August, 1954 and 11th December 1954, made under sub-section (2) of section 10 of the Bombay Police Act, 1951 (Bombay Act XXII of 1951) that the powers, functions and duties under the said Act shall also be exercised by the Deputy Commissioners of Police, Greater Bombay.

And whereas evidence has been placed before me, Deputy Commissioner of Police, Crime Branch (I), against the person known as Kunwar Rameshwar Singh, to the following effect:—

I. That since October, 1953 in the locality known as Falkland Road, Foras Road, Sukhalaji Street, Bapty Road, Kamathipura and the areas adjoining thereto in Greater Bombay his movements and acts are causing alarm and harm to the persons residing in, carrying on business in, or visiting the said locality in that:

(i) He with assistance of his associates some of them being Sk. Makbool Sk. Hussain, Abdul Rahiman, Suleman *alias* Sapad, Ahmad Yusuf *alias* Ahmed Dalal, Shafi and others, extort money from women residing in and carrying on business either as prostitutes or singing girls in the said locality on threats of assault and of causing bodily injury to them;

(ii) That he with the assistance of the said associates assault or threaten with assault the aforesaid women who do not comply with his demands for money;

(iii) That in order to compel the aforesaid women to pay him the money demanded by him he also posts his associates at or near the places of business of the aforesaid women and prevent customers from entering the rooms of such women;

1956

Bhagubhai
Dullabhabhai
Bhandari

v.

The District
Magistrate, Thana
and others

Sinha J.

1956

*Bhagubhai
Dullabhabhai
Bhandari*

v.

*The District
Magistrate, Thana
and others*

Sinha J.

(iv) That he with the assistance of his associates extort money from shopkeepers, hotel-keepers, merchants and hawkers carrying on business in the said locality and from rent collectors of buildings occupied by the aforesaid prostitutes and singing girls by assaulting them or threatening them with assault and dislocation of business;

(v) That he causes damage to the property of the said hotelkeepers and hawkers of the said locality who do not pay him money demanded by him;

(vi) That he accosts persons visiting the rooms of singing girls in the said locality for the purpose of entertainment and demand money from them under threats of assault and of preventing them from visiting the said locality;

(vii) That he has committed several acts of the nature mentioned above;

II. That witnesses to the above incidents are not willing to come forward to give evidence in public against him as they apprehend that they will be assaulted by him and/or by his associates if they do so.

And whereas I have heard the said person and considered the explanation tendered by him and also the evidence given by the witnesses produced by him and have heard his counsel;

And whereas after considering all the evidence and explanation detailed above, I am satisfied that:—

The movements and acts of Kunwar Rameshwar Singh since October, 1953, are causing alarm and harm to the persons residing in carrying on business in or visiting the locality known as Falkland Road, Foras Road, Sukhalaji Street, Bapty Road, Kamathipura and the areas adjoining thereto in Greater Bombay and that he indulges in activities mentioned above.

And whereas in my opinion witnesses are unwilling to come forward to give evidence in public against the said person by reason of apprehension on their part as regards the safety of their persons;

Now, therefore, in exercise of the powers vested in me under section 56 of the said Act, I, Shri W. K. Patil, Deputy Commissioner of Police, Crime Branch

(I) C.I.D., Greater Bombay hereby direct that the said Kunwar Rameshwar Singh shall remove himself outside the limits of Greater Bombay by Central Rly. (route) within seven days from the date of service of this order and I further direct that he shall not enter the said area of Greater Bombay for a period of two years from the date of this order without a permission in writing from the Commissioner of Police, Greater Bombay, or the Government of Bombay.

Sd. W. K. Patil,

Dy. Commissioner of Police,
Crime Branch (I) C.I.D. Greater Bombay”.

The order quoted above is a self-contained one and discloses the nature of the allegations against him which he had been called upon to explain. The petitioner preferred an appeal to the third respondent, the State of Bombay. But his appeal was dismissed on the 17th January 1955. The petitioner challenged the validity of the said order passed by the respondents by a petition under article 226 of the Constitution to the Bombay High Court, but it was dismissed on the 14th March 1955 after hearing. The judgment of the High Court is Exhibit D. The learned Judge of the Bombay High Court who dealt with the petition has set out briefly the main allegations of the petitioner and the affidavit in answer to the petition sworn to by the 1st respondent here. The learned Judge observed in the course of his judgment that in view of the averments in the petition and those in the affidavit in reply it was impossible for him to hold that the Deputy Commissioner of Police knew that witnesses were willing to give evidence against the petitioner. The petitioner went up on Letters Patent Appeal and a Division Bench consisting of the Chief Justice and another Judge of the Bombay High Court dismissed the appeal holding that once the opinion has been formed by the authority that witnesses were unwilling to give evidence in public against the petitioner, the court could not go behind that opinion. They also negatived the plea of want of *bona fides* in the 1st respondent who had initiated the proceedings.

1956

—
*Bhagubhai
Dullabhbabhai
Bhandari*

v.
*The District
Magistrate, Thana
and others*

—
Sinha J.

1956

Bhagubhai
Dullabhabhai
Bhandari

v.

The District
Magistrate, Thana
and others

Sinha J.

The petitioner removed himself outside the limits of Greater Bombay. Having come to know that a warrant of arrest had been issued against him in a certain pending case before the Presidency Magistrate, Fourth Court, at Girgaum, Bombay, on the 6th April 1955, the petitioner entered Greater Bombay to attend court but he was arrested under the Act for committing a breach of the externment order. He was prosecuted before the Presidency Magistrate, Sixth Court at Mazgaon, Bombay, for an offence under section 142 of the Act. He was convicted by the Magistrate and sentenced to nine months' rigorous imprisonment by a judgment dated the 8th September 1955. The Magistrate's judgment is Exhibit F to the petition. The learned Magistrate overruled the petitioner's contention that the order of externment passed against him was illegal, relying chiefly upon the judgments of the High Court referred to above, upholding the constitutionality of that order. As regards his defence that he had entered Greater Bombay in obedience to the warrant issued against him, the learned Magistrate observed that as a matter of fact, according to the statement of the petitioner's counsel before him he had taken that step "to test the validity of the order". Secondly, the learned Magistrate has rightly pointed out that the petitioner should have obtained the previous permission of the Police Commissioner before returning to Bombay, as otherwise the order of externment would be rendered nugatory. The learned Magistrate also observed in the course of his judgment that no allegations of *mala fides* had been made against the police officers who had initiated the proceedings against the petitioner.

The petitioner went up in appeal to the High Court of Bombay which by its judgment dated the 5th October 1955 upheld the conviction and the sentence. The judgment of the High Court is Exhibit G to the petition. A Division Bench of the Bombay High Court repelled the contention on behalf of the appellant that the order of externment was invalid, relying chiefly upon the previous judgment of that very court upholding the constitutionality of the very order

impugned. Another matter referred to in the judgment of the High Court is rather significant. On behalf of the appellant reliance had been placed upon a letter alleged to have been sent to the petitioner by the Secretary to the Chief Minister granting permission to him to return to Bombay in order to see the Home Secretary. It was found on enquiry by the learned Government Pleader who intimated to the court that the alleged letter had not been signed by the Secretary to the Chief Minister and that no such letter had actually been sent to him. On that statement being made, the petitioner's counsel did not press his contention that his return was after permission. The petitioner moved this Court for special leave to appeal against the said judgment of the High Court in Petition No. 601 of 1955. One of the grounds in the petition was that the High Court should have held that the externment order was illegal and that therefore the petitioner's entry was lawful. A Constitution Bench of this Court by its order dated the 21st November 1955 dismissed the petition for special leave to appeal. This completes the statement of the case made on behalf of the petitioner.

In answer to this petition the first respondent has sworn to the affidavit filed in this Court. It is necessary to state in some detail the facts stated in this affidavit which furnish the background to the whole case against the petitioner. The petitioner is said to be a native of Balrampur, District Gonda, Uttar Pradesh. After passing his school examination in 1940, he joined the then Royal Indian Navy in 1942. In the year 1946 while he was attached to S. S. Talwar in Bombay, he was "released from service". In 1947 he joined the B. B. & C. I. Railway as a clerk and was removed from his post in July 1947 for having made baseless allegations against his superior officer. In 1949 he made an attempt to enter the police force of Greater Bombay, but that failed as he was found to be unreliable. Subsequently, in August 1950 he joined the State Transport Department as a clerk but had again to be removed from that post in April 1951. Later on, the petitioner obtained accommodation in

1956

*Bhagubhai
Dullabhabhai
Bhandari*

v.

*The District
Magistrate, Thana
and others*

Sinha J.

1956

*Bhagubhai
Dullabhabhai
Bhandari*

v.

*The District
Magistrate, Thana
and others*

Sinha J.

Bombay on a false representation that he was a refugee from Pakistan. He was prosecuted and convicted and sentenced to pay a fine of Rs. 30 or three months' rigorous imprisonment in default. His appeal from that order of conviction and sentence to the High Court of Bombay was dismissed by a Division Bench in September 1954. On a similar false representation he had obtained from the Custodian of Evacuee Property two shops in Bombay. Necessary proceedings had to be taken against him for evicting him from those shops. After his removal from Government jobs as aforesaid, the petitioner "came forward" as a social worker directing his activities mainly to "the redlight district" in certain quarters of Greater Bombay inhabited by over 10,000 public women. Along with his associates he started a no-rent campaign and resorted to violence with the help of so-called volunteers who were themselves bad characters, extermeees, drunkards and persons with previous convictions. With the help of associates like those he moved in the "redlight district" and realised money from his victims by threat and intimidation. Thus by all questionable means the petitioner started extorting moneys by harassing the inmates of that district and those who frequented those quarters. The rest of the long affidavit running into 29 paragraphs is devoted to denying the allegations made by the petitioner that he had been a victim of police combination against him or that the procedure laid down by the law had not been followed or that the petitioner had not a fair and full opportunity of explaining his case to the authorities. The affidavit further asserts that witnesses who had given their statements to the police against the petitioner were not willing to come forward openly to depose against him and some of those witnesses who did turn up were prevailed upon by the petitioner to change their original statements made during the preliminary inquiries. On those averments it was submitted by the 1st respondent that the proceedings against him were regular and in accordance with the provisions of

the Act and that there was no merit in his contentions.

These two petitions were heard along with Petition No. 272 of 1955 which is being disposed of by a separate judgment. In that case the order impugned had been passed under section 57 of the Act. Sections 56 to 59 of the Act are closely connected. The common arguments addressed to us by Shri Purshotham challenging the validity of sections 56 to 59 have been dealt with in that judgment and need not be repeated here. It is only necessary to deal with the provisions of the section impugned in these two cases, namely, section 56 of the Act, which is in these terms:—

“Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section to the District Magistrate, or the Sub-Divisional Magistrate specially empowered by the State Government in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their parts as regards the safety of their person or property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction by

1956

*Bhagubhai
Dullabhabhai
Bhandari*

v.

*The District
Magistrate, Thana
and others*

—
Sinha J.

1956

—
*Bhagubhai
Dullabhabhai
Bhandari*
v.
*The District
Magistrate, Thana
and others*
—
Sinha J.

such route and within such time as the said officer may prescribe and not to enter or return to the said area from which he was directed to remove himself”.

In order to attract the operation of the section quoted above with special reference to the portions relevant to these cases, it is necessary (1) that the Commissioner, the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government in that behalf, as the case may be, should be satisfied that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII, Indian Penal Code, or in the abetment of any such offence, and (2) that in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their parts as regards the safety of their person or property. When the officer concerned is satisfied about these two essential matters, he may direct such person to remove himself outside the local limits of his jurisdiction and not to return to the said area for a period not exceeding two years as laid down in section 58. But before passing such orders the person proceeded against under section 56 has to be given an opportunity of explaining matters against him by adducing such evidence as he may tender after he has been informed in writing as to the “general nature of the material allegations against him”. Such a person is entitled to appear before the officer by an advocate or attorney for the purpose of tendering his explanation and evidence.

It has not been contended on behalf of the petitioners that they had not been given the opportunity contemplated by section 59. But grievance was sought to be made of the fact that particulars of the evidence against the petitioners and of their alleged activities have not been given to them. That argument has

been dealt with in the judgment in the other case. It is necessary therefore to deal only with the particular arguments advanced on behalf of each petitioner peculiar to his case.

In Petition No. 439 of 1955, it was said that this Court had laid down in the case of *Gurbachan Singh v. State of Bombay*⁽¹⁾ as follows:—

“The law is certainly an extraordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitutes a menace to the safety of the public residing therein”.

The words “no witnesses” have been emphasized as supporting the argument that unless all the witnesses before the police are unwilling to give evidence in open court the provisions of section 56 cannot be taken recourse to. In our opinion, it is reading too much into the observations of this Court quoted above, made by Mukherjea, J. (as he then was). The learned Judge did not mean to lay down, and we do not understand him as having laid down, that unless each and every witness is unwilling to give evidence in open court, the provisions of section 56 are not available to the police. The words of section 56 quoted above do not lend themselves to that extreme contention. If such an extreme interpretation were to be put on that part of section 56, it is not difficult to imagine a situation where it will become almost impossible to apply that section to any case.

It was next contended on behalf of the petitioner in this case that the section contemplates witnesses other than members of the police force and employees and officers of the Customs Department. It is said that it is the duty of the police force as of the employees of the Customs Department to brave all danger and to come out in the open even against desperate criminals to give evidence against them in court and to subject themselves to cross-examination. That is a counsel of perfection which every member

1956

—
*Bhagubhai
Dullabhabhai
Bhandari*

v.
*The District
Magistrate, Thana
and others*

—
Sinha J.

(1) [1952] S.C.R. 737.

1956

Bhagubhai
Dullabhabhai
Bhandari

v.

The District
Magistrate, Thana
and others

Sinha J.

of the police force or every employee of the Customs Department may not be able to act up to. Furthermore, the terms of the section do not justify any such restricted meaning being given to the word "witness". Hence, in our opinion, there is no justification for the contention that members of the police force and employees and officers of the Customs Department must always come in the open and give evidence against criminals or potential criminals. If the officer concerned is satisfied that witnesses of whatever description they may be, are not willing to come out in the open, one of the essential conditions of the application of section 56 is fulfilled and it is no more necessary for them to stop to consider as to which class of persons those witnesses may come from.

In Petition No. 440 of 1955 the learned counsel for the petitioner had a more uphill task in view of the fact that this very order impugned had been examined in the criminal prosecution against the petitioner by the Presidency Magistrate and by the High Court on appeal and the petition for special leave to appeal to this Court had been refused. But it was argued on behalf of the petitioner that section 56 itself was invalid as contravening the provisions of article 19 of the Constitution—an argument which has already been dealt with by this Court in *Gurbachan Singh v. State of Bombay*⁽¹⁾ referred to above. In that case, Mukherjea, J. (as he then was) delivered the judgment of the court after examining the constitutionality of section 27(1) of the City of Bombay Police Act, (Bombay Act IV of 1902). The operative words of that section are almost exactly the same as those of section 56 of the Act. It is not therefore necessary to re-examine the constitutionality of those very provisions in this case. It is enough to point out that no attempt was made in this Court to shake the authority of that decision.

Shri Dadachanji, who appeared on behalf of the petitioner in this case faintly suggested that the petitioner had been proceeded against under the penal sec-

(1) [1952] S.C.R. 737.

tion of the Act notwithstanding the fact that he had entered Greater Bombay in order to look after the case pending against him in which a warrant of arrest had been issued. But that is a closed chapter so far as the courts including this Court also are concerned inasmuch as his conviction stands confirmed as a result of the refusal of this Court to grant him special leave to appeal from the judgment of the Bombay High Court. He further contended that his conviction for his having entered Greater Bombay itself is an indication of the unreasonableness of the restriction and of the law under which the order of externment had been passed against him. But if the petitioner had only taken the course indicated by the law, namely, of obtaining the previous permission of the prescribed authority, he could have avoided the prosecution and the conviction. It must therefore be held that there is no merit in this contention also.

For the reasons aforesaid it must be held that section 56 of the Act is not unconstitutional and that the orders passed against the petitioners are not invalid. These applications must stand dismissed.

JAGANNADHADAS J.—In view of the decision of this Court in *Gurbáchan Singh v. The State of Bombay*⁽¹⁾, I agree that these petitions should be dismissed.

But I think it right to add that if the matter were *res integra* I should have felt difficulty in upholding the validity of section 56(b) of the Bombay Police Act, 1951 (Bombay Act XXII of 1951) in so far as it did not demarcate the application thereof to the more serious classes of offences falling within the specified Chapters, serious either because of the nature of the offence contemplated or the circumstances under which it is to be committed and so forth. I should also have felt difficulty in holding a provision to be reasonable which clothes the executive officers with an authority to•extern a person for so long a

1956

Bhagubhai
Dullabhabhai
Bhandari

v.

The District
Magistrate, Thana
and others

Sinha J.

(1) [1952] S.C.R. 737.

1956

Bhagubhai
Dullabhabhai
Bhandari

v.

The District
Magistrate, Thana
and others

Jagannadhadass J.

period as two years. It has been said that there is a power of cancellation at any time vested in the officer concerned. Even so, I should have thought that the vesting of a power to extern a person out of his home for so long a period without the obligation to review the order at some stated periodical intervals, say once in three months or six months, is *prima facie* unreasonable. Externment might appear on the surface not to be as serious an interference with personal liberty as detention. But in actual practice it may be productive of more serious injury to the person concerned—or the rest of his family if he is the earning member. An externed person is virtually thrown on the streets of another place where he has got to seek his livelihood afresh. He has to start in a new society with the black-mark of externment against him and may be driven thereby to more criminality. On the other hand, in the case of a person under detention, the State normally takes or is bound to take care of him, and in appropriate cases provides also for his family.

In view, however, of the previous decision of this Court which is binding on me, I am prepared to accept the validity of section 56 of the Bombay Police Act, 1951, and of the orders of externment passed thereunder in these two cases.

Petition dismissed.
