

RAHMAT KHAN @ RAMMU BISMILLAH

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v.

DEPUTY COMMISSIONER OF POLICE

(Criminal Appeal No. 912 of 2021)

AUGUST 25, 2021

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[INDIRA BANERJEE AND V. RAMASUBRAMANIAN, JJ.]

Maharashtra Police Act, 1951 – s.56(1)(a)(b) – Externment order – The State Government introduced a scheme for the upliftment of the Muslim community by providing quality education to Muslim children – The State announced the disbursement of grants to 33 Madrasas of Amravati District for the Financial Year 2014-2015 – Appellant came to know of irregularities in the running of Madrasas, including misappropriation of public money distributed to Madrasas in the said District – Pursuant thereto, various complaints were made – The appellant requested the Collector as also the police to investigate misappropriation of Government grants by Madrasas in collusion with Government officials – In retaliation, affected persons filed complaints against the Appellant u/ss.384, 452, 294, 506(B), 34 IPC – The appellant also filed a Public Interest Litigation – Thereafter, appellant received a notice u/s. 56(1)(a)(b) of 1951 Act and externment proceedings were initiated against the appellant by Police – By an order of externment dated 07.05.2018, the appellant was directed not to enter or return to the District for a period of one year from the date on which he leaves, or is taken out of the District – Held: An externment order may sometimes be necessary for maintenance of law and order – However the drastic action of externment should only be taken in exceptional cases, to maintain law and order in a locality and/or prevent breach of public tranquility and peace – In the instant case, it is patently clear that the impugned externment order was an outcome of the complaints lodged by the appellant against government officials, some Madrasas and persons connected with such Madarasas who later lodged FIRs against the appellant – The FIRs are clearly vindictive, retaliatory and aimed to teach a lesson to the Appellant and stifle his voice – On perusal of the responses of government authorities to queries raised by the appellant under the Right to Information Act clearly indicate that the complaints are not frivolous ones, without substance

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A – *Thus, the impugned externment order cannot be sustained and is set aside.*

Allowing the appeal, the Court

B **HELD: 1. The Sections 56 to 59 of the Maharashtra Police Act, 1951 are intended to prevent lawlessness and deal with a class of lawless elements in society who cannot be brought to book by established methods of penal action, upon judicial trial. [Para 33][587-F]**

C **2. An externment order may sometimes be necessary for maintenance of law and order. However the drastic action of externment should only be taken in exceptional cases, to maintain law and order in a locality and/or prevent breach of public tranquility and peace. In this case, it is patently clear that the impugned externment order was an outcome of the complaints lodged by the Appellant against government officials, some Madrasas and persons connected with such Madarasas who later lodged FIRs against the Appellant. The FIRs are clearly vindictive, retaliatory and aimed to teach a lesson to the Appellant and stifle his voice. [Para 34][587-G-H; 588-A]**

E **3. In the facts and circumstances of this case, the notices of externment and the impugned externment order based on Crime Nos 344 of 2017, 352 of 2017 registered with Nagpuri Gate Police Station and Crime No.501 of 2017 registered with the Kotwali Police Station in Amravati City are patently arbitrary, mala fide, unsustainable in law and liable to be set aside. [Para 35][588-B]**

F **4. It is patently clear that pursuant to a complaint dated 14.9.2017 an inquiry was conducted by the Deputy District Collector against the Director (previously Deputy Director) of Education, District Planning Officer Ravindra Kale, Extension Officer Sandip Bodhke. The Inquiry Report along with explanation of the officers has been sent to the Chamber Officer of the Minority Development Department, Mantralaya, Mumbai for further action. The Director (previously Deputy Director) of Education, District Planning Officer lodged FIR No.501/2017 dated 13th October 2017 against the Appellant under Section 384 of the Indian Penal Code, exactly within one month from the date**

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of the Appellant's complaint against him, in respect of illegalities in relation to disbursal of funds to Madarsas. [Para 37][589-A-C]

5. The deplorable allegation of demand for ransom by threat, prima facie, appears to have been concocted to give the complaint a colour of intense gravity. It been argued that the Appellant had been extorting money under threat of exposing the illegal activities of certain officials and certain Madrasas or educational institutions. Even assuming that there was substance in the allegation, which appears to be doubtful, an order of externment was unwarranted. There was no reason for the complainants who lodged the FIRs to get terrorized by the alleged threats, allegedly meted out by the Appellant, for if those complainants had not indulged in unlawful acts, they had nothing to fear. Even otherwise, threat to lodge a complaint cannot possibly be a ground for passing an order of externment under Section 56 of the Maharashtra Police Act, 1951, more so, when the responses of government authorities to queries raised by the Appellant under the Right to Information Act clearly indicate that the complaints are not frivolous ones, without substance. A person cannot be denied his fundamental right to reside anywhere in the country or to move freely throughout the country, on flimsy grounds. [Para 40][590-C-E]

6. Having regard to the special facts and circumstances of this case, where on the basis of complaints lodged by the Appellants inquiry had been started by the concerned authorities against government officials and educational institutions including the complainants, who lodged the FIRs against the Appellant, the impugned externment order which followed, cannot be sustained. [Para 41][590-F]

Pandharinath Shridhar Rangnekar v. Dy. Commr. of Police, the State of Maharashtra (1973) 1 SCC 372 : [1973] 3 SCR 63; *State of Maharashtra and Ors. v. Salem Hasan Khan* (1989) 2 SCC 316 : [1989] 1 SCR 970 – relied on.

Gazi Saduddin v. State of Maharashtra (2003) 7 SCC 330 : [2003] 2 Suppl. SCR 966 – referred to.

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Case Law Reference

[1973] 3 SCR 63	relied on	Para 28
[2003] 2 Suppl. SCR 966	referred to	Para 29
[1989] 1 SCR 970	relied on	Para 31

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 884 of 2021.

From the Judgment and Order dated 31.03.2021 of the High Court of Gujarat at Ahmedabad, in Criminal Miscellaneous Application No.19358 of 2020.

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Anshin H. Desai, Sr. Adv., D.N. Ray, Nandish H. Thacker, Dillip Kumar Nayak, Ms. Disha Ray, Mrs. Sumita Ray, Advs. for the Appellant.

Manoj Swarup, Sr. Adv., Shakti Kanta Pattanaik, Dhruv K. Dave, Kalpesh N. Soni, Kanu Agrawal, Advs. for the Respondents.

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The following order of the Court was passed:

INDIRA BANERJEE, J.

1. Leave granted.

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2. This appeal is against a final judgment and order dated 29th January, 2021 passed by the Nagpur Bench of the High Court of Judicature at Bombay, dismissing the Criminal Writ Petition No. 490 of 2018 filed by the Appellant, challenging an order of Externment dated 07.05.2018 passed by the Deputy Commissioner of Police, Zone-1, Amravati City, under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951, whereby the Appellant has been directed not to enter or return to Amravati City or Amravati Rural District for a period of one year from the date on which he leaves, or is taken out of Amravati City and/or Amravati Rural District.

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3. Paragraphs 1 and 2 of the impugned Externment Order are extracted hereinbelow for convenience:

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“Whereas as per the Order under section 10(2) of the Bombay Police Act (Mumbai 22 of 1951) the Govt. of Maharashtra by Order No. Maharashtra Ordinance No.9/94 dt.24th June, 1994 has directed that, Deputy Commission of Police (Zonal) Amravati will implement the power, work and duties conferred upon him under section 56 of the said Act.

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Whereas against Rahematakhani @ Rammu Bismillakhan, age 48 years, R/o Chaman Chhaoni, University Road, Amravati the proof of following nature has been submitted before me.

1. Since 2017 due to his act and movement fear has been created in the locality under Police Station, Nagpurigate and Kotwali and to the property of people residing in the nearby surroundings and un-safety has been created in their mind. In future, also there is every possibility of creation of un-safety.

(a) The said person by accompanying with his companions is engaged in serious offence like threatening to kill by abusing and demanding ransom to the people residing in area specified above.

Offence registered against aforesaid person.

Sr. No.	Police Station	Crime No.	Sections	Date	Settlement
1	Nagpurigate	344/2017	384, 452, 294, 506(B), 34 IPC	12/10/2017	Under Police Investigation
2	Nagpurigate	352/2017	384, 448, 294, 504, 506(B), 34 IPC	23/10/2017	Under Police Investigation
3	Kotwali	501/2017	384 IPC	13/10/2017	Under Police Investigation

Prohibitory Action

Sr. No.	P.S.	Iste. No. & Section	Date of Registration
1	Nagpurigate	53/17 under section 110(e) (g) Cr.P.C.	04/12/2017

In this way he is liable to be punished as per Chapter 17 of the I.P.C.

(b) The aforesaid person accompanying with his companions is engaged in serious offence like threatening to kill by abusing and demanding ransom to the people residing in area specified above.

2. He has committed activities of the nature as mentioned in paragraph No.1 sub-para No.A and B, so also has committed

A *several activities of the nature mentioned in the show cause notice....”*

4. On or about 11th October, 2013, the Government of Maharashtra introduced a scheme called “Dr. Zakir Hussain Madrasa Adhunikikaran Yojana” hereinafter referred to as ‘the Scheme’ for the upliftment of the Muslim community by providing quality education to Muslim children.

5. As per the Scheme, the Madrasas registered with the office of Charity Commissioner or Waqf Board which had completed three years were to be given priority for allotment of funds for basic amenities, remuneration of teachers, scholarship of students, etc.

C 6. Pursuant to a Government Resolution dated 20th March 2015, the State of Maharashtra announced the disbursement of grants totaling a sum of Rs.1,35,70,000/- to 33 Madrasas of Amravati District for the Financial Year 2014-2015.

D 7. The Appellant claims to be a religious minded journalist and social worker, who has been fighting against corruption and misuse of public funds. The Appellant used to publish the newspaper “kalam Ki Takat” till 2009.

E 8. According to the Appellant, his daughter was studying in a Madrasa in Amravati District in Maharashtra. At that time, the Appellant came to know of irregularities in the running of Madrasas, including misappropriation of public money distributed to Madrasas in Amravati District, by the State of Maharashtra.

F 9. The Appellant has alleged that complaints were received by the Government of Maharashtra, of illegalities in distribution of grants under the Scheme, during the Financial Years 2014-2015 and 2015-2016. The appellant had also made such complaints.

10. In view of the complaints as aforesaid, all Collectors were directed to initiate inquiry into the disbursement of grants to Madrasas during the Financial Years 2014-2015 and 2015-2016.

G 11. On or about 9th August, 2017 the Appellant made an application under the Right to Information Act, 2005, seeking information from the District Planning Committee, Amravati of the outcome of the inquiry and details of distribution of grants in Amravati District in the Financial Years 2014-2015 and 2015-2016.

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12. By a communication dated 18th September, 2017 the Appellant was informed that a Government Order dated 24th May, 2017 had been passed for enquiry, but no Enquiry Report had been received by the office of the District Planning Committee. The Appellant was furnished with a list of grantees to whom grants had been disbursed during the years 2014-2015 and 2015-2016, with particulars of the amounts granted to the respective granters.

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13. The Appellant claims that he came to know that certain government officers, including one C.R. Rathod, the then Deputy Director of Education, Amravati, had disbursed grants under the Scheme in contravention of the Government Resolution dated 11th October, 2013.

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14. On or about 14th September, 2017, the Appellant filed a complaint with the Collector, Amravati seeking appropriate action against the concerned officers including the said C.R. Rathod, allegedly responsible for illegal distribution of grants. The Appellant also requested the Collector to stop the distribution of Government grants under the scheme, in contravention of Rules, to certain educational institutions and Madrasas including the institutions run by Joha Education and Charitable Welfare Trust and Madrasi Baba Education Welfare Society.

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15. On 13th October, 2017, the Appellant requested the Collector as also the police to investigate misappropriation of Government grants by Madrasas in collusion with Government officials. In retaliation, affected persons filed complaints against the Appellant, particulars whereof have been mentioned in paragraph 1 of the impugned Externment Order extracted above. The Appellant applied for and was granted bail by the Sessions Court, on condition that the Appellant would attend to the Police Station concerned till the chargesheet was filed.

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16. The Appellant appears to have filed applications under Section 482 of the Code of Criminal Procedure in the High Court, for quashing the criminal cases referred to above, which are pending adjudication.

17. On or about 30.01.2018, the Appellant filed a Public Interest Litigation in the Nagpur Bench, praying for the following orders:

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“(i) issue a writ, order or direction in the nature of Mandamus commanding the State Minority Development Department to take action and stop distribution of grants to the respondent no. 11 to 29 and all concerned Madarssa’s, into the matter of the selection of the Madarsa’s under the said scheme, which

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- A *are not registered with charity commissioner or Wakf Board and regarding the same inquiry has been already done in the year 2017 as of the Annexure F and report of it already been prepared and submitted by the residential collector Amravati to the respondent no.2 further be pleased to direct the*
- B *respondent no.1 to 2 to submit the details of the action taken against all the concerned Madarsas, before this Hon'ble Court in stipulated time.*
- (ii) issue a writ, order or directions to take action against the respondent no. 2-10 who are responsible for the selection of the Madarsas under the scheme.*
- C *(iii) issue a writ, order or direction in the nature of Mandamus directing an independent, impartial enquiry to be conducted regarding all the Madarsas running in the state of Maharashtra and are receiving grants under the scheme, by any retired High Court Judge for submitting its report before this Court in a stipulated time.*
- D *(iv) issue a writ, order or direction in the nature of Mandamus commanding the Respondent no. 2 to 6 to furnish the record of the funds distributed under the schemes to the different Madarsas.*
- E *(v) issue a writ, order or direction in the nature of Mandamus commanding the respondents 1 to initiate the departmental and disciplinary proceeding against the Respondents no. 2-10 who are responsible for selection of the 36 Madarsas.*
- F *(vi) issue a writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*
- (vii) award the cost of the petition to the petitioner."*

G 18. Some time thereafter, a Show Cause Notice dated 3rd April 2018 was issued to the Appellant from the office of the Assistant Police Commissioner, Gadge Nagar Division, Amravati informing him of the initiation of Externment proceeding against him under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951. According to the Appellant, he received the show cause notice on 12th April, 2018.

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19. By a letter dated 16th April, 2018 the Appellant replied to the
Show Cause Notice dated 3rd April, 2018, inter alia, contending-

“1. In the show cause notice the reference of three criminal
offences pending against me are reflecting which includes Crime
No. 344/17, 352/17 registered with Police Station Nagpuri gate
and Crime No. 501/17 registered with Police Station Kotwali. It
appears that in the show cause notice the date of the said offences
is deliberately not shown.

2. First offence i.e. Crime No. 344/17 registered against me is on
the complaint filed by one Shamim Azahar Khan Jafar Ali Khan
dt. 12/10/2017 in which it is alleged by him that I the undersigned
had threatened him on 20/9/2017 at about 9.30 A.M. to 10 A.M.
and demanded Rs.50,000/-. On the basis of said complaint FIR
was lodged against me for the offences punishable u/s 294, 34,
384, 452, 506(B) of IPC. I have filed application u/s 482 CrPC
before the Hon’ble High Court Bench at Nagpur challenging the
said FIR vide Criminal Application (APL) no. 921/2017. In which
Hon’ble High Court was pleased to issue notices and same is
pending as on today. I submit that the FIR in question is maliciously
lodged as I have pursued the matter of misappropriation by the
various schools including the office bearers of the Education
Department while implementing the Scheme of Government vide
G.R. dt. 11/10/2013.

3. Second Offence i.e. Crime No. 352/17 registered against me is
on the complaint filed by one Irfan Ahmed Mohd. Sheikh dt.
23/10/2017 in which it is alleged by him that I the undersigned
along with three other had threatened him and demanded
Rs.5,00,000/-. On the basis of said complaint FIR was lodged
against me for the offences punishable u/s 448, 384, 294, 504,
506(B) and 34 of IPC. I have filed application u/s 482 CrPC
before the Hon’ble High Court Bench at Nagpur challenging the
said FIR vide Criminal Application (APL) no. 922/2017. In which
the Hon’ble High Court was pleased to issue notices and same is
pending as on today. I submit that the FIR in question is maliciously
lodged as I have pursued the matter of misappropriation by the
various schools including the office bearers of the Education
Department while implementing the Scheme of Government vide
G.R. dt. 11/10/2013.

- A 4. Third Offence i.e. Crime No. 501/17 registered against me is on the complaint filed by one Chandansingh Ramsingh Rathod dt. 13/10/2017 in which it is alleged by him that I the undersigned had demanded Rs.25,000/- from him for not lodging complaint against him with collector. On the basis of said complaint FIR was lodged against me for the offences punishable u/s. 384 of IPC. I have filed application u/s 482 CrPC before the Hon'ble High Court Bench at Nagpur challenging the said FIR vide Criminal Application (APL) no. 924/2017. In which the Hon'ble High Court was pleased to issue notices and same is pending as on today. I submit that the FIR in question is maliciously lodged as I have pursued the matter of misappropriation by the various schools including the office bearers of the Education Department while implementing the Scheme of Government vide G.R. dt. 11/10/2013.
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- D 5. That the impugned action is nothing but a pressurized tactics on me for not pursuing the matter of misappropriation before the concerned authorities as the impugned action is initiated against me only after I have approached the Hon'ble High Court by filing application for quashing of the three FIRs referred in the notice in question. As such the action is with ulterior motive and malafide.
- E 6. That all the three FIRs are output of personal allegations levelled against me and no allegations which satisfies a requirement of Section 56(1)(a)(b) of the Bombay Police Act. Thus the three FIRs cannot be a ground of externment me from entire Amravati District."
- F 20. On 25th April, 2018 the Appellant received another notice dated 20th April, 2018 from the Office of the Deputy Commissioner of Police, Zone 1, Amravati City, under Section 59 of the Maharashtra Police Act 1951. Thereafter externment proceedings were initiated against the Appellant, which culminated in the impugned Externment order.
- G 21. The impugned Externment Order refers to three Crime Cases, being Crime Case Nos. 344/17, 352/17 and 501/17, which were initiated pursuant to three First Information Reports (FIRs); (i) the first FIR dated 12.10.2017 lodged at the Nagpuri Gate Police Station, by Shamim Azahar Khan Jafal Ali Khan, Headmaster of Priyadarshani Urdu Primary and Pre Secondary School, run by Madrasi Baba Education Welfare Society at Azad Colony, Amravati, (ii) the second FIR dated 23.10.2017 also
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lodged at the Nagpur Gate Police Station by Irfan Ahmed Mohammad Sheikh, Headmaster of Al-Haram International English School, run by Joha Educational and Charitable Trust at Jamiya Nagar, Lal Khadi Ring Road, Amravati, and (iii) the third FIR dated 13th October, 2017 lodged at the Kotwali Police Station in Amravati City, by C. R. Rathod , the then Deputy Director of Education, Amravati.

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22. The Appellant had been filing applications under the Right to Information Act, 2005, seeking information from concerned authorities, in relation to illegalities in disbursement of funds to various Madrasas including Al Haram International English School run by Joha Education and Charitable Welfare Trust, and Priyadarshini Urdu Primary and Pre-Secondary School run by Madrasi Baba Education Welfare Society. Pursuant to such applications, the Office of the Education Officer had sought information from the concerned Headmasters vide communications dated 23.8.2017 and 25.9.2017 respectively.

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23. It is the case of the Appellant that Crime Nos. 352/2017 and 344/2017 were initiated as a counterblast, in retaliation to the steps taken by the Appellant to put an end to illegal misappropriation of public funds and to initiate action against those involved in illegal practices. The Criminal Case No.501/2017 filed by the said C.R. Rathod, Deputy Director of Education, Amravati is also retaliatory, according to the Appellant.

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24. It is not in dispute that the three FIRs were filed soon after the Appellant started making complaints and raising queries under the Right to Information Act, 2005. Reference may be made to a response dated 7.9.2018 of the Office of the District Collector in response to a query of the Appellant vide an application dated 16.8.2018. The response is extracted below for convenience.

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“As per the terms and conditions of Government Resolution of 11th October, 2013 on the order of District Collector on the complaint dated 14.9.2017 of Rahemat Khan Bismilla Khan in the year 2016-17 inquiry of total 36 Madarsas was done on 15.11.2017 and 26.11.2017 who have taken Government Grant. After this inquiry with the signature of Resident Dy. District Collector and District Collector in office note in the proposal of 36 Madarsa there is certificate of registration with the office of Charity Commissioner. But there is no registration Certificate in the name of Madarsa in the office

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A *of Waqf Board or Charity Commissioner. In the year 2016-17 the Directors of total 36 Madarsa have been found guilty hence further proposal has been sent to the Govt for necessary action. After getting directives from the Govt further action would be taken."*

B 25. After investigation of Crime No. 344/2017 (initiated pursuant to the FIR lodged by Shamim Azahar Khan of Priyadarshani Urdu Primary and Pre-Secondary School), charge sheet was submitted in the Court of the Judicial Magistrate, First Class, Court No. 11, Amravati. Charges were framed and the case was registered as Reg. CrI. Case No. 421. The appellant has been acquitted by a judgment and order dated 26th February, 2020 of the Judicial Magistrate.

C 26. The impugned Externment Order records that witnesses are not ready to adduce evidence publicly against the Appellant for fear of physical harm as also loss of their property. By a notice sent on 20th April, 2018 the Appellant was called for a hearing to submit his reply.

D The Appellant submitted his reply which as per the impugned Externment Order "does not feel to be cogent".

27. Allegedly on the basis of statement made by undisclosed persons whose identity, it is claimed, cannot be disclosed, to protect them from the danger of retribution, the Deputy Commissioner issued an order recording the finding extracted hereinbelow :-

E *"... I am sure that, the said person named Rahematkhan alias Rammu Bismillakhan age 48 years, R/o Chaman Chhaoni, University Road, Amravati Alongwith his colleagues is engaed in illegal acts, serious offence like threatening to kill by abusing and demanding tribute in the Police Commissionerate to the people residing in the localities under Nagpurigate and Kotwali. As he is having backing of Grundyism he alongwith his companions he threatens the residents of aforesaid locality and part.*

G *The said offences are punishable under Chapter XVII of the I.P.C.*

Whereas as per my opinion as it is felt that the safety of property of witnesses will be endangered, the witnesses are not ready adduce evidence publicly by coming forward against the said person. The Police Inspector by making utmost

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efforts took two witnesses in confidence and after assuring them that, if they record their statement/evidence then their names and identification will be kept secret. They will not call before any Court or open Forum to adduce evidence. On such assurance their evidence has been recorded in closed doors. Perused the said closed door statements and got sure about its factual condition. On perusing all the documents, there is no effect of cases filed in Court against the said person....”

28. The scope and ambit of Sections 56 to 59 of the Maharashtra Police Act, 1954 was considered in ***Pandharinath Shridhar Rangnekar v. Dy. Commr. Of Police, the State of Maharashtra*** reported in (1973) 1 SCC 372 cited by Mr. Patil, appearing for the State, where this Court held:

“8. Section 56 of the Act provides, to the extent material, that whenever it shall appear in Greater Bombay to the Commissioner: (a) that the movements of acts of any person are causing or are 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 Penal Code, 1860, 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 part as regards the safety of their person or property, the said officer may by order in writing direct such person to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts or any part thereof contiguous thereto, within such time as the said officer may prescribe and not to enter or return to the said area from which he was directed the remove himself. Under Section 58, an order of externment passed under Section 56 can in no case exceed a period of two years from the date on which it was made. The relevant part of Section 59(1) provides that before an order under Section 56 is passed against any person, the officer shall inform that person in writing “of the general nature of the material allegations

- A *against him” and give him a reasonable opportunity of tendering an explanation regarding those allegations. The proposed externee is entitled to lead evidence unless the authority takes the view that the application for examination of witnesses is made for the purpose of vexation or delay.*
- B *Section 59 also confers on the person concerned a right to file a written statement and to appear through an advocate or attorney.*
- C *9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (a) or (b) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. A full and*
- D *complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those*
- E *who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal*
- F *evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee “of the general nature of the material allegations against him”.*
- G *That obligation fixes the limits of the co-relative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.*
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10. It is true that the provisions of Section 56 make a serious inroad on personal liberty but such restraints have to be suffered in the larger interests of society. This Court in *Gurbachan Singh v. State of Bombay*[1952 SCR 737 : AIR 1952 SC 221 : 1952 SCJ 279] had upheld the validity of Section 27(1) of the City of Bombay Police Act, 1902, which corresponds to Section 56 of the Act. Following that decision, the challenge to the constitutionality of Section 56 was repelled in *Bhagubhai v. Dulldbhabhai Bhandari v. District Magistrate, Thana*. We will only add that care must be taken to ensure that the terms of Sections 56 and 59 are strictly complied with and that the slender safeguards which those provisions offer are made available to the proposed externee.

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15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subserve its real purpose. How long, within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is able to collect in the externment proceedings. There are cases and cases and therefore no general formulation can be made that the order of externment must always be restricted to the area to which the illegal activities of the externee extend. A larger area may conceivably have to be comprised within the externment order so as to isolate the externee from his moorings.

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16. An excessive order can undoubtedly be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. The decision of the Bombay High Court in *Balu Shivling Dombe v. Divisional Magistrate, Pandharpur*, is an instance in point where an externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as districts of Sholapur, Satara and Poona. These areas are far widely removed from

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A *the locality in which the externee had committed but two supposedly illegal acts. The exercise of the power was therefore arbitrary and excessive, the order having been passed without reference to the purpose of the externment.”*

29. In ***Gazi Saduddin v. State of Maharashtra*** reported in (2003) 7 SCC 330, also cited by Mr. Patil, this Court held that in passing an order of externment, the authority passing the order must be satisfied of the expediency of passing the order. If the satisfaction recorded by the authority is objective and is based on material on record then the Court would not interfere with the order passed by the authority, only because another view can possibly be taken. **However, the satisfaction of the authority can be interfered with if the satisfaction recorded is demonstrably perverse, based on no evidence, misleading evidence or no reasonable person could have, on the basis of the materials on record, been satisfied of the expediency/necessity of passing an order of externment.**

D 30. In ***Gazi Saduddin*** (supra), the externment notice referred to three criminal proceedings registered against the appellant. It was alleged in the notice that movements and activities of the appellant had caused alarm in the locality and created an atmosphere of terror. It contained details of three incidents having occurred within the period of a fortnight or a month prior to the date of notice, wherein the appellant had threatened the people for seeking their cooperation in teaching a lesson to a particular religious community. It was mentioned that the appellant had established contacts with an organisation engaged in activities against communal harmony and national security and had participated in a programme of burning the effigies of leaders of that religious community, thereby causing communal tension in the area.

G 31. The judgment of this Court in ***State of Maharashtra and Ors. v. Salem Hasan Khan*** reported in (1989) 2 SCC 316 pertained to a person found to be frequently engaged in illegal business of narcotics, who was involved in several cases of riot and also criminal intimidation, of the residents of the locality because of suspicion that they were supplying information to the police about his illegal activities. Witnesses were, therefore, not willing to come forward and depose against him. Rejecting the argument that the allegations in the show cause notice were too vague in the absence of details to afford the externee reasonable opportunity to defend himself, this Court held that a full a complete

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disclosure of particulars as was requisite in an open prosecution, would frustrate the very purpose of an externment proceeding. This Court observed :-

“4....There is band of lawless elements in society which it is impossible to bring to book by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisal witnesses are unwilling to depose in public. While dealing with the contention that the State Government was under a duty to give reasons in support of its order dismissing the appeal, the point was rejected in the following terms: (SCC p. 378, para 14)

“Precisely for the reason for which the proposed externee is only entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment.”

As observed, if the authorities were to discuss the evidence in the case, it would be easy to fix the identity of the witnesses who were unwilling to depose in public against the proposed externee. A reasoned order containing a discussion would probably spark off another round of harassment...”

32. Significantly, even though this Court allowed the Appeal of the State and set aside the order of the High Court quashing the externment order, this Court made it clear that the externment order should not be enforced against the externee any further.

33. From the judgments cited on behalf of the State, it is patently clear that Sections 56 to 59 of the Act are intended to prevent lawlessness and deal with a class of lawless elements in society who cannot be brought to book by established methods of penal action, upon judicial trial.

34. An externment order may sometimes be necessary for maintenance of law and order. However the drastic action of externment should only be taken in exceptional cases, to maintain law and order in a locality and/or prevent breach of public tranquility and peace. In this case, it is patently clear that the impugned externment order was an outcome of the complaints lodged by the Appellant against government

A officials, some Madrasas and persons connected with such Madarasas who later lodged FIRs against the Appellant. The FIRs are clearly vindictive, retaliatory and aimed to teach a lesson to the Appellant and stifle his voice.

B 35. In the facts and circumstances of this case, the notices of externment and the impugned externment order based on Crime Nos 344 of 2017, 352 of 2017 registered with Nagpuri Gate Police Station and Crime No.501 of 2017 registered with the Kotwali Police Station in Amravati City are patently arbitrary, mala fide, unsustainable in law and liable to be set aside.

C 36. It would be pertinent to refer to communication No. KS-8/ALP0S/K.L./KV/2018 dated 25.7.2018 from the office of District Collector, Amravati in response to queries raised by the Appellant. It is extracted hereinbelow for convenience:-

D *“In view of the above subject the Annexure-A of your application submitted under Right to Information Act 2005 has been received by this Office. Regarding Point No.1 and 4 as mentioned in your application you have asked for the information. The information related to point No.1 and 3 is available in this office; but the information related to point No.4 is not available in record of this office. Hence available information is being provided to you whereas the information that is not available is not being provided.*

Sr. No.	Information demanded by the applicant	Information provided to the applicant
1	Information of point No. 1, 2 and 3 would be given as per the record.	Would be given as per the record.
2	Point No 4: To contemporary Education Officer Secondary & Present Director of Education Chandansingh Ramsingh Rathod, contemporary District Planning Officer Ravindra Kale, Extension Officer Sandip Bodkhe with reference to the complaint dated 14/9/2017 in respect of Bogus Madarse about the letter given for submitting say in view of explanation letter dated 13/10/2017, 26/9/2017 and 3/10/2017 returned back to the Officer of District Collector, if the concerned Office is satisfied and trusting that letter then in view of that letter the true copy may be given duly attested.	In this matter in respect of the Inquiry Officer Secondary & Present Director of Education in view of the complaint received after inquiry of Dy. District Collector with the explanation of said officers the inquiry report has been sent to Chamber Officer, Minority Dev Department, Mantralaya, Mumbai for further necessary action. After receipt of further order any action about the complaint can be taken.

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37. It is patently clear that pursuant to a complaint dated 14.9.2017 an inquiry was conducted by the Deputy District Collector against the Director (previously Deputy Director) of Education, C.R. Rathod, District Planning Officer Ravindra Kale, Extension Officer Sandip Bodhke. The Inquiry Report along with explanation of the officers has been sent to the Chamber Officer of the Minority Development Department, Mantralaya, Mumbai for further action. C.R. Rathod lodged FIR No.501/2017 dated 13th October 2017 against the Appellant under Section 384 of the Indian Penal Code, exactly within one month from the date of the Appellant's complaint against him, in respect of illegalities in relation to disbursal of funds to Madarsas.

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38. As observed above, the Appellant was acquitted in Crime No.344 of 2017. FIR No.352/2017 dated 23.10.2017 which led to initiation of Crime No.352/2017 was apparently filled soon after the complainant of the said FIR/Crime case being the Head Master, Al-Haram International School received a communication from the Office of the Education Officer (Primary), Zila Parishad, Amravati directing him to furnish information sought by the Appellant by filing an application under the Right to Information Act, 2005.

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39. From the tenor of the complaint lodged by Irfan Ahmed Mohd. Sheikh, Headmaster of the Al Haram International English School with the Nagpuri Gate Police Station, it is patently clear that there were disputes with regard to the manner of operation of the school. Accordingly, in the FIR it is stated:-

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“This School is formed after obtaining requisite permission as per rule. Their U-Dise Number is 27071502112. On 8th August 2017 the non-applicant Rehemat Khan filed an application for getting certain information under Right to Information Act. On 4/10/2017 the non-applicant No 1 came in the office of the applicant and demanded the information that was given to him. The applicant verbally told him and given in writing that this is a private school hence information cannot be given under Right to Information.

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The applicant tried to convince the non-applicant No 1 that in this school no any malfunction takes place, hence there is no question arises to pay him anything. On that he got

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A *delirious with anger and said the applicant that TUM*
 BHADKHAU HO, MAI TUMHARA HISAB KARTA HOON.
 Saying this he aimed the pistol towards me and tried to come
 near to me. Hearing this noise the Staff Members, School Bus
B *Driver Shakil Ahmed, Teacher of the school Hafiz Riyaz*
 Huseni, Watchman of the School Abdul Sayeed all entered in
 the office and seeing the situation they stopped the non-
 applicant and attempted to control him.”

40. The deplorable allegation of demand for ransom by threat,
prima facie, appears to have been concocted to give the complaint a
colour of intense gravity. Mr. Patil argued that the Appellant had been
C extorting money under threat of exposing the illegal activities of certain
 officials and certain Madrasas or educational institutions. Even assuming
 that there was substance in the allegation, which appears to be doubtful,
 an order of externment was unwarranted. There was no reason for the
 complainants who lodged the FIRs to get terrorized by the alleged threats,
D allegedly meted out by the Appellant, for if those complainants had not
 indulged in unlawful acts, they had nothing to fear. Even otherwise, threat
 to lodge a complaint cannot possibly be a ground for passing an order of
 externment under Section 56 of the Maharashtra Police Act, 1951, more
 so, when the responses of government authorities to queries raised by
 the Appellant under the Right to Information Act clearly indicate that the
E complaints are not frivolous ones, without substance. A person cannot
 be denied his fundamental right to reside anywhere in the country or to
 move freely throughout the country, on flimsy grounds.

41. Having regard to the special facts and circumstances of this
case, where on the basis of complaints lodged by the Appellants inquiry
F had been started by the concerned authorities against government officials
 and educational institutions including the complainants, who lodged the
 FIRs against the Appellant, the impugned externment order which
 followed, cannot be sustained.

42. The Appeal is accordingly allowed, and the impugned
G externment order is set aside.