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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7360 of 2021

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PRAVINBHAI @ P K NARANBHAI CHARAN

Versus

STATE OF GUJARAT
and
SUB-DIVISIONAL MAGISTRATE, GODHRA
& ORS.

=====

Appearance:

MS NIDHI P BAROT, ADVOCATE for the Petitioner
MR HARDIK SONI, APP for the Respondent Nos.1 to 3

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CORAM: HONOURABLE MR. JUSTICE PARESH UPADHYAY

Date : 02/08/2021

ORAL ORDER

1. Challenge in this petition is made to the order passed by the Sub-Divisional Magistrate, Godhra Prant, Godhra, dated 24.06.2021 in Externment Case No.17 of 2021, whereby the petitioner is externed for a period of two years from several Districts viz. Panchmahals, Mahisagar, Dahod, Chhota Udepur, Vadodara (City and Rural), Kheda and Anand. The said order is stated to have been passed in exercise of powers under Section 56(b) of the Gujarat Police Act, 1951.

2. Rule returnable on 13.08.2021. Learned Additional Public Prosecutor waives service of notice of Rule on behalf the respondents No.1 to 3 - Authorities.

3. Heard learned advocate for the petitioner and learned

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Additional Public Prosecutor for the respondent Nos.1 to 3 - Authorities.

4. The basis of the impugned externment order is principally three FIRs. Whether, on the basis of the said FIRs, externment order could be passed, itself is an aspect which may be subsequently gone into by this Court, however there is a glaring aspect that, the Sub-Divisional Magistrate, Godhra has passed the impugned order of externing the petitioner from even the District : Anand, which is not only, not within the local limits of his jurisdiction, that district is not even contiguous thereto, as contemplated under Section 56(b) of the Act, where-from the power is derived. The impugned externment order is thus, without authority of law.

5. In view of above it transpires that, even if the scrutiny, whether the impugned order can be termed to be just and proper can be gone into at the time of final hearing, it is ex-facie beyond the authority of law. The impugned order therefore needs to be stayed.

6. There is one more glaring aspect. The basis to pass the externment order is three FIRs, one is of the year 2017 and the second is of the year 2019, which are relatively stale. The cause of action for the SDM, Godhra to pass the externment order is an FIR dated 14.06.2021 being C.R. No.525 of 2021, registered with the Godhra Taluka Police Station. It is submitted that, the said FIR is registered on the complaint filed by one Mr. Malavdipsinh, who is stated to be son of Mr. C.K. Raulji - MLA of Godhra Assembly Constituency. The gist of the said FIR, as reflected in the externment order is taken into

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consideration by this Court. The petitioner - the citizen complained as to why the MLA is not doing work of the people and heated words were exchanged. Thus on merits, as an off-shoot of the said grievance of a citizen, an FIR came to be registered against him on the written complaint of the son of the said MLA and the Deputy Collector has readily obliged by ordering externment of the said citizen, even beyond the powers vested in the officer. If the grievance of the citizen against local MLAs are to be dealt with in this manner, not only the citizen needs to be protected, even the response needs to be asked from the concerned MLA, whether he supports such an order.

7. Thus on merits, the impugned order is vulnerable and on competence, it is unsustainable because the order of externing the petitioner is passed even from the district which is not contiguous to the district in which the SDM is working.

8. In view of above, the following order is passed.

8.1 Leave to join Mr. C.K.Raulji, Member of the Gujarat Legislative Assembly, Godhra Constituency, Godhra, as party respondent No.4.

8.2 Issue notice to the newly added respondent returnable on 13.08.2021.

8.3 It would be open for the petitioner to serve the newly added respondent by Registered Post, through the concerned Sub-Divisional Magistrate, Godhra Prant, Godhra.

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8.4 It is ordered that, the impugned externment order shall remain stayed, until further orders.

8.5 Affidavit in reply, if any, by the externing Authority, be filed before the next date of hearing.

Direct service qua respondent No.4 is permitted.

M.H. DAVE/79

(PARESH UPADHYAY, J)

