

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

W.P. No.21686 of 2021

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon'ble Shri Subodh Abhyankar J.

Writ Petition No.21686 of 2021

Raju @ Pushpendra Bhadoriya

Versus

Collector/District Magistrate, Indore & Ors.

Shri R. S. Chhabra, Counsel for the petitioner.

Shri Siddharth Jain, Counsel for the respondents/State.

* * * * *

ORDER

(Passed on 24/11/2021)

This petition has been filed by the petitioner Raju @ Pushpendra Bhadoriya against the order of externment dated 17.09.2021 passed by the respondent No.1 – Collector/District Magistrate, Indore wherein the respondent has externed the petitioner from the limits of District Indore as also the adjoining Districts. In the petition, the petitioner has averred that although the remedy of appeal is available to him, however, as the petitioner has been deprived of proper hearing by the respondent and principles of natural justice have been violated, the present petition has been directly filed before this Court.

2. In brief, the facts of the case are that on a recommendation made by the Superintendent of Police, West Zone, Indore dated 24.03.2021 for initiation of externment proceedings against the petitioner on the ground that the petitioner is involved in various

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criminal activities since 1998, which has led to fear in the minds of public and the public at large is also afraid to lodge any report against the petitioner. To this recommendation, the District Magistrate vide its notice dated 29.04.2021 ask the petitioner to show cause as to why he should not be externed from the Indore and adjoining Districts. On this show cause notice, a reply was filed by the petitioner on 01.06.2021 on the ground that the petitioner is a social worker and the 9 cases, which are said to be registered against him are minor in nature, which have been lodged only due to political vendetta and out of the 9 cases, six cases are under Sections 323, 294, 506, 34 of IPC, and one case is under Section 110 of Cr.P.C., whereas other two cases are under Sections 188, 147, 341 of IPC, which are prohibitory in nature. Out of these nine cases, in six cases he has already been acquitted and in other three cases two cases are still under investigation. Written submissions were also submitted by the petitioner. In the written submission, the petitioner also mentioned that the copies of the judgments of acquittal, which have been passed in his favour, could not be procured by him on account of summer vacation and lockdown owing to Covid-19, and he could not obtain the certified copies of such judgments of acquittal to substantiate his contention, hence, two months time be granted to him to produce the aforesaid documents.

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3. Shri R. S. Chhabra, counsel for the petitioner has submitted that in the impugned order the District Magistrate has referred to all the criminal cases registered against the petitioner and has come to a conclusion that along with his reply, the petitioner has filed only one order of acquittal and the respondents have placed on record the documents regarding all the cases registered against the petitioner, which shows that he is still involved in criminal activities. Counsel has also submitted that no witness has been examined in the present case and only S.P.'s report has been made the basis to extern the petitioner.

4. Counsel for the petitioner has also submitted that even otherwise the operational area of the petitioner is only within the jurisdiction of Police Station – Heera Nagar and out of 9 cases, 8 cases have been registered against him by Police – Heera Nagar and one case is by Police Chhoti Gwaltoli. In such circumstances, he should not have been externed from the adjoining Districts also. In support of this contention, Shri Chhabra has also relied upon a decision of Bombay High Court in the case of **Balu Shivling Dombe Versus The Divisional Magistrate Pandharpur and another** reported in **AIR 1969 Bombay 351**.

5. Counsel for the respondents/State, on the other hand, has opposed the prayer and it is submitted that no case for interference is

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made out as the petition is misconceived for the reason that an efficacious alternative statutory remedy of appeal under the provisions of Section 9 of the M.P. Rajya Suraksha Adhiniyam, 1990 is available to the petitioner and by circumventing the aforesaid remedy available to him under the law, this petition has been filed, which is liable to be dismissed on this ground only.

6. Counsel has further submitted that even otherwise 9 cases have been registered against the petitioner and in such circumstances no illegality can be said to have been committed by the District Magistrate in passing the impugned order.

7. In rebuttal, Shri Chhabra has submitted that as it is a clear case of violation of the principles of natural justice, the petition is maintainable before this court under art.226 and averments regarding which have also been made in para 3 of the writ petition.

8. Heard Counsel for the parties and perused the record.

9. Thus, this court is required to see if the remedy of appeal is available to the petitioner or he can also assail the impugned order by way of the present writ, invoking jurisdiction of this court under Art.226 of the Constitution. So far as the criminal cases and their status, on the basis of which the impugned order has been passed are concerned, the same are reproduced as hereunder in tabular form :-

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Sr.No.	Crime No.	Sections	Police Station	Cr. Case No.	Status
1	171/98	323, 294, 506, 336, 34 IPC	Hiranagar	498/98 dt.26/10/1998	Charge Framed pending
2	280/2000	147, 294, 506, 323 IPC	Chhoti Gwaltoli	13388/2000 dt.22/09/2000	Charge Framed pending
3	78/06	451, 323, 294, 336, 506, 34 IPC	Hiranagar	16803/2006 dt.19/05/2006	Charge Framed pending
4	180/09	188, 34 IPC	Hiranagar	17560/2009 dt.31/07/2009	Charge Framed pending
5	681/14	323, 294, 506, 34 IPC	Hiranagar	23060/16 dt.07/07/2016	Charge Framed pending
6	304/17	147, 341 IPC	Hiranagar	845/18 dt.16/02/2018	Charge Framed pending
7	321/19	323, 294, 427, 506, 34 IPC	Hiranagar	Under Investigation	-
8	207/21	323, 294, 506, 34 IPC	Hiranagar	Under Investigation	-
9	118/21	110 Cr.P.C.	Hiranagar	Under Investigation	-

10. It is apparent from the aforesaid offenses that none of them are serious in nature.

11. From the record, it is apparent that the petitioner in his written submissions had also sought time to file the orders of acquittal in the criminal cases, which have been registered against him as he could not obtain the certified copies in time owing to summer vacation as also the Covid-19 restrictions. The impugned order reveals that the District Magistrate has also made it a ground that the petitioner has not filed the orders of acquittal passed in his favour and has relied upon the cases enumerated by the S.P. in his recommendation and has come to a conclusion that since so many cases have been registered

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against the petitioner, which shows his involvement in the criminal cases even now. This Court also finds that before passing the impugned order, the District Magistrate has not recorded the statement of any person from the area, who could say that he is afraid to go to police station only on account of the terror or influence exercised by the petitioner.

12. In view of the aforesaid discussion, it is apparent that by not providing the petitioner sufficient time to produce the orders of acquittal in the cases in which he was already acquitted, the principles of natural justice have been clearly violated and in such peculiar circumstances, even if the petitioner has not availed the remedy of appeal, this Court is of the considered opinion that this petition under Article 226 of the Constitution of India is maintainable. In the considered opinion of this court, had an opportunity to produce the copies of acquittal orders passed in favour of the petitioner been given to him by the District Magistrate, the result of the outcome could have been different.

13. So far as the contention that the order of externment cannot be passed in respect of other adjoining district is concerned, this court is not required to dwell upon the same as the impugned order is liable to be quashed on the ground of violation of principles of natural justice.

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14. In such circumstances, the petition stands **allowed** and the impugned order dated 17.09.2021 is hereby quashed.

C. c. as per rules.

(SUBODH ABHYANKAR)
JUDGE

Pankaj

Digitally signed by KHEMRAJ JOSHI
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