HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 17TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MRS JUSTICE K.G.SHANTHI

WRIT APPEAL NO. 100386 OF 2026 (GM-POLICE)

BETWEEN:

MUZAMMIL S/O MOHAMMEDSHARIF ATTAR,
AGE. 28 YEARS, OCC. BUSINESS,
R/O. H.NO.2362, AZADGALLI, BELAGAVI-590001.

- APPELLANT

(BY SRI. ANWARALI D. NADAF, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   BY ITS PRINCIPAL SECRETARY,
   HOME DEPARTMENT, VIDHAN SOUDHA,
   BENGALURU-560001.

2. DEPUTY COMMISSIONER OF POLICE (L AND O),
   OFFICE OF EXECUTIVE MAGISTRATE,
   BEHIND LINGARAJ COLLEGE, COLLEGE ROAD,
   BELAGAVI-590001.

3. STATION HOUSE OFFICER,
   GRAMEEN POLICE STATION,
   BAGALKOTE-587101.

- RESPONDENTS

(BY SRI. T. HANUMAREDDY, AGA FOR R1 TO R3)

VINAYAKA B V
Digitally Signed By: VINAYAKA B V
Location: High Court of Karnataka, Dharwad Bench
Date: 2026.06.17 19:26:26 +0530

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT 1961, PRAYING TO SET ASIDE THE IMPUGNED ORDER PASSED IN W.P. NO. 104739/2026 DATED 11.06.2026 AND CONSEQUENTLY ALLOW THE WRIT PETITION THEREBY ALLOWING ALL THE PRAYERS SOUGHT IN THE WRIT PETITION & ETC.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV
AND
HON'BLE MRS JUSTICE K.G.SHANTHI

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV)

The present writ appeal is filed by the person externed who had challenged the order of externment dated 04.06.2026 in the writ proceedings.

2. In terms of the order of externment dated 04.06.2026 the authority concerned in exercise of power under Section 56 of the Karnataka Police Act, 1963 (for short '***K.P.*** Act') has passed the order whereby the petitioner was externed for a period of six months between 04.06.2026 to 03.12.2026 with a restriction on his entry in Belagavi District and externed to Bagalkot District. Further permission was granted to enter the territorial limits of Courts where pending proceedings relating to the petitioner were being heard.

3. The order of externment refers to the cases pending against the petitioner which were taken note of. Relevant extract of the order of externment referring to the cases

pending against the petitioner and are found in the table which is a part of the order of externment. The said table is extracted as below.

ಪ್ರಸ್ತಾವನೆ:–

ಫಿರ್ಯಾದುದಾರರಾದ ಪೊಲೀಸ್ ಇನ್ಸಪೆಕ್ಟರ್ ಮಾರ್ಕೇಟ್ ಪೊಲೀಸ್ ಠಾಣೆ, ಬೆಳಗಾವಿ ನಗರ ರವರು ಎದರುಗಾರ ಮುಜಮ್ಮಿಲ್ ಮಹ್ಮದಶರೀಫ ಅತ್ತಾರ, ಸಾ: ಮನೆ ನಂ–2362, ಆಜಾದಗಲ್ಲಿ ಬೆಳಗಾವಿ ಇವರ ವಿರುದ್ಧ ಕರ್ನಾಟಕ ಪೊಲೀಸ್ ಕಾಯ್ದೆ 1963 ಕಲಂ 56 ರ ಪ್ರಕಾರ ಕ್ರಮಕೈಕೊಳ್ಳುವಂತೆ ವಿನಂತಿಸಿ ಉಲ್ಲೇಖಿತ–3 ರ ಅಡಿಯಲ್ಲಿ ಎ.ಸಿ.ಪಿ ಮಾರ್ಕೇಟ್ ಉಪವಿಭಾಗ ರವರ ಮುಖಾಂತರ ಈ ನ್ಯಾಯಾಲಯಕ್ಕೆ ವರದಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಈ ವರದಿಯಲ್ಲಿಯ ಅಂಶಗಳ ಮೇರೆಗೆ ಹಾಗೂ ಫಿರ್ಯಾದಿಯವರು ಸಲ್ಲಿಸಲಾದ ದಾಖಲಾತಿಗಳ ಪರಿಶೀಲನೆಯ ನಂತರ ಈ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಗಡಿಪಾರು ಪ್ರಕರಣದ ವಿಚಾರಣೆ ನಡೆಯಿಸಲಾಗಿದ್ದು, ವಿಚಾರಣೆಯಲ್ಲಿ ಈ ಕೆಳಕಾಣಿಸಿದ ಅಂಶಗಳು ಕಂಡು ಬಂದಿರುತ್ತವೆ.

1. ಫಿರ್ಯಾದುದಾರರಾದ ಪೊಲೀಸ್ ಇನ್ಸಪೆಕ್ಟರ್ ಮಾರ್ಕೇಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ರವರು ಮಾರ್ಕೇಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಜಾ.ನಂ:895/2026 ದಿನಾಂಕ: 11/05/2026 ರ ಅಡಿಯಲ್ಲಿ ಸಹಾಯಕ ಪೊಲೀಸ್ ಆಯುಕ್ತರು, ಮಾರ್ಕೇಟ್ ಉಪವಿಭಾಗ ರವರ ಮುಖಾಂತರ ಈ ನ್ಯಾಯಾಲಯಕ್ಕೆ ವರದಿ ಸಲ್ಲಿಸಿದ್ದು, ಅದರಲ್ಲಿ ಎದುರುದಾರರಾದ ಮುಜಮ್ಮಿಲ್ ಮಹ್ಮದಶರೀಫ ಅತ್ತಾರ, ಸಾ: ಮನೆ ನಂ–2362, ಆಜಾದಗಲ್ಲಿ ಬೆಳಗಾವಿ ರವರು ಸನ್ 2014 ರಿಂದ ಬೆಳಗಾವಿ ನಗರದಲ್ಲಿ ಸಾರ್ವಜನಿಕರ ಶಾಂತಿ ಮತ್ತು ಸುವ್ಯವಸ್ಥೆಗೆ ಧಕ್ಕೆ ತರುವಂತಹ ಒಬ್ಬ ಮುಖ್ಯ ವ್ಯಕ್ತಿಯಾಗಿದ್ದು, ಇವರು ಸುಮಾರು ವರ್ಷಗಳಿಂದ ಜೂಜಾಟವೆಂಬ ಸಾಮಾಜಿಕ ಪಿಡಗನ್ನು ತಮ್ಮ ವೃತ್ತಿಯನ್ನಾಗಿ ಮಾಡಿಕೊಂಡು ತಮ್ಮಿಂದ ಬಡ ಕುಟುಂಬಗಳು ಆರ್ಥಿಕವಾಗಿ ನೆಮ್ಮದಿ ಕಳೆದುಕೊಳ್ಳುವಂತೆ ಮಾಡಿರುತ್ತಾರೆ ಹಾಗೂ ಇವರು ಸಮಾಜಘಾತುಕ ಚಟುವಟಿಕೆಗಳಲ್ಲಿ ತೊಡಗಿಕೊಂಡು ಬೆಳಗಾವಿ ನಗರದಲ್ಲಿ ದೊಂಬಿ ಮಾಡಿಸುವ ಉದ್ದೇಶದಿಂದ ಒಂದು ಸಮಾಜವನ್ನು ಉದ್ರೇಕಿಸುವ ಪೋಸ್ಟನ್ನು ಸಾಮಾಜಿಕ ಜಾಲತಾಣದಲ್ಲಿ ಹರಿಬಿಟ್ಟು ಸಾರ್ವಜನಿಕ ಶಾಂತತಾ ಭಂಗ ಪಡಿಸುವ ಹುನ್ನಾರ ಮಾಡುವಂತಹ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿ ಸಮಾಜ ಕಂಟಕರಾಗಿರುತ್ತಾರೆ ಈ ಮೂಲಕ ಇವರು ಸಾರ್ವಜನಿಕರ ನೆಮ್ಮದಿಯನ್ನು ಹಾಳು ಮಾಡುವ ಕೃತ್ಯದಲ್ಲಿ ತೊಡಗಿ ಬೆಳಗಾವಿ ನಗರದ ಜನರಲ್ಲಿ ಅಶಾಂತಿ ವಾತಾವರಣ ನಿರ್ಮಾಣ ಮಾಡಿದ್ದು, ಇವರ ಚಟುವಟಿಕೆಗಳಿಂದಾಗಿ ಸಾರ್ವಜನಿಕರು ಭಯಭೀತಿಯಲ್ಲಿಯೇ ಜೀವನ ನಡೆಯಿಸುವ ಅನಿವಾರ್ಯ ಪರಿಸ್ಥಿತಿ ಉಂಟಾಗಿರುತ್ತದೆ. ಸದರಿಯವರ ಮೇಲೆ ಈ ವರೆಗೆ ಬೆಳಗಾವಿ ನಗರದ ವಿವಿಧ ಪೊಲೀಸ್ ಠಾಣೆಗಳಲ್ಲಿ ಈ ಕೆಳಕಾಣಿಸಿದ ಪ್ರಕರಣಗಳನ್ನು ದಾಖಲಿಸಲಾಗಿರುತ್ತದೆ.

ಅ ನಂ	**ಅಪರಾಧ ಸಂಖ್ಯೆ ಹಾಗೂ ಕಲಂ**	**ಪ್ರಕರಣದ ಸಾರಾಂಶ**	**ಪ್ರಕರಣದ ಸಧ್ಯದ ಹಂತ**
1.	ಬೆಳಗಾವಿ ಗ್ರಾಮೀಣ ಪೊಲೀಸ್ ಠಾಣೆ ಅಪರಾಧ ಸಂಖ್ಯೆ: 228/2014 ಕಲಂ: 87 ಕೆಪಿ ಕಾಯ್ದೆ	ದಿನಾಂಕ: 09/11/2014 ರಂದು 1700 ಗಂಟೆಗೆ ಆರೋಪಿ ನಂ:1 ಮುಜಾಮಿಲ್ ಶರೀಪ್ ಅತ್ತಾರ ಸಾ:ಆಜಾದಗಲದಲ್ಲಿ ಬೆಳಗಾವಿ ಹಾಗೂ ಇನ್ನುಳಿದ 6 ಜನ ಆರೋಪಿತರು ಕೂಡಿಕೊಂಡು ಸಾವಗಾಂವ ರಸ್ತೆ ಬೆನಕನಹಳ್ಳಿ ಗ್ರಾಮದ ಅಂಗಡಿ ಕಾಲೇಜ ಎದುರಿಗೆ ಕೆ.ಹೆಚ್.ಬಿ	ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಸಿ.ಸಿ.ನಂ:13/2015 ನೇದ್ದರ ಕೆಳಗೆ ವಿಚಾರಣೆ ನಡೆದು 07/04/2015 ರಂದು ಶಿಕ್ಷೆಯಾಗಿರುತ್ತದೆ.

		ಹತ್ತಿರ ಸಾರ್ವಜನಿಕ ಸ್ಥಳದಲ್ಲಿ ತಮ್ಮ ಸ್ವಂತ ಪಾಯ್ದೆಗೋಸ್ಕರ ಇಸ್ಪೀಟ ಎಲೆಗಳ ಮೇಲೆ ಹಣಹಚ್ಚಿ ಅಂದರ ಬಾಹರ ಅಂಬುವ ಜುಗಾರ ಆಟವನ್ನು ಆಡುತ್ತಿದ್ದಾಗ ಸಿಕ್ಕ ಅಪರಾಧ	
2.	ಮಾರ್ಕೆಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಅಪರಾಧ ಸಂಖ್ಯೆ:152/2019 ಕಲಂ 87 ಕೆಪಿ ಕಾಯ್ದೆ	ದಿನಾಂಕ: 20–11–2019 ರಂದು 2050 ಗಂಟೆಗೆ ಸದರಿ ಆರೋಪಿ ಮುಜಾಮಿಲ್ ಮಹ್ಮದಶರೀಪ್ ಅತ್ತಾರ ಹಾಗೂ ಇನ್ನುಳಿದ 7 ಜನ ಆರೋಪಿತರು ಕೂಡಿಕೊಂಡು ಬೆಳಗಾವಿ ನಗರದ ಇನಾಮದಾರ ಚಾಳ ಖುಲ್ಲಾಜಾಗೆಯಲ್ಲಿ ಸಾರ್ವಜನಿಕ ಸ್ಥಳದಲ್ಲಿ ದುಂಡಗೆ ಕುಳಿತುಕೊಂಡು ತಮ್ಮ ಸ್ವಂತ ಲಾಭಕ್ಕಾಗಿ ಇಸ್ಪೀಟ ಎಲೆಗಳ ಮೇಲೆ ಹಣ ಹಚ್ಚಿ ಅಂದರ ಬಾಹರ ಅಂಬುವ ಜುಗಾರ ಆಟವನ್ನು ಆಡುತ್ತಿದ್ದಾಗ ಸಿಕ್ಕ ಅಪರಾಧ	ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಸಿ.ಸಿ.ನಂ:1023/2019 ನೇದ್ದರ ಕೆಳಗೆ ವಿಚಾರಣೆ ನಡೆದು 13/08/2022 ರಂದು ಶಿಕ್ಷೆಯಾಗಿರುತ್ತದೆ.
3.	ಮಾರ್ಕೆಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಅಪರಾಧ ಸಂಖ್ಯೆ:80/2021 ಕಲಂ: 160 ಐಪಿಸಿ	ದಿನಾಂಕ: 04–07–2021 ರಂದು ಆರೋಪಿತರಾದ 1)ಮುಜಮಿಲ್ ಶರೀಫ ಅತ್ತಾರ ಹಾಗೂ 2) ರಫೀಕ್ ಸಮದ್ ಮುಲ್ಲಾ ಸಾ :ಕಸಾಯಿ ಗಲ್ಲಿ ಬೆಳಗಾವಿ ಇವರು ಯಾವುದೋ ಕಾರಣಕ್ಕಾಗಿ 1730 ಗಂಟೆಗೆ ಆಜಾದಗಲ್ಲಿ ಬ್ರಹ್ಮಲಿಂಗಗುಡಿ ಹತ್ತಿರ ಸಾರ್ವಜನಿಕ ಸ್ಥಳಗಳಲ್ಲಿ ಒಬ್ಬರಿಗೊಬ್ಬರು ತಂಟೆ ಮಾಡಿ ಸಾರ್ವಜನಿಕ ಶಾಂತಿ ಭಂಗ ಮಾಡುತ್ತಿದ್ದಾಗ ಸಿಕ್ಕ ಅಪರಾಧ.	ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಸಿ.ಸಿ.ನಂ:474/2021 ನೇದ್ದರ ಕೆಳಗೆ ವಿಚಾರಣೆ ನಡೆದು ದಿನಾಂಕ:06/08/2021 ರಂದು ಶಿಕ್ಷೆಯಾಗಿರುತ್ತದೆ.
4.	ಮಾರ್ಕೆಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಅಪರಾಧ ಸಂಖ್ಯೆ: 65/2025 ಕಲಂ.192 ಬಿಎನ್ಎಸ್ 2023	ದಿನಾಂಕ :25.03.2025 ರಂದು ಆರೋಪಿ ಮುಜಮಿಲ್ ಮಹ್ಮದಶರೀಫ ಅತ್ತಾರ ಈತನು ತನ್ನ Muzammilattar03 ಇನ್ಸ್ಟಾಗ್ರಾಮ ಅಕೌಂಟದಲ್ಲಿ ಔರಂಗಜೇಬನ ಫೋಟೊ ಹಾಕಿ ಅದರಲ್ಲಿ Baap hai tumhare bhulna mat (ನಿಮ್ಮ ತಂದೆ ಇವನು ಮರೆಯೋಕೆ ಹೋಗಬೇಡಿ) ಅಂತಾ ಕ್ಯಾಪ್ಷನ್ ಹಾಕಿ ಅದರ ಕೆಳಗೆ ಟಿಪ್ಪು ಸುಲ್ತಾನ ಮತ್ತು ಹುಲಿಯ ಫೋಟೊ ಹಾಕಿ ಅದಕ್ಕೆ ಹಿಂದಿ ಭಾಷೆಯ ಅಗ್ನಿಪತ ಚಲನಚಿತ್ರದ "ಜ್ವಾಲಾಸಿ ಚಲತಿ ಹೈ ಆಖೋಮೇ ಜಿಸ್ಕೆ ಭಿ ದಿಲ್ ಸೆ ತೇರಾ ನಾಮ ಹೈ" ಪರವಾಹಕ್ಯಾ ಉಸ್ಕಾ ಆರಂಭ ಕೈಸಾ ಹೈ	ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಸಿ.ಸಿ.ನಂಬರ 07/2026 ನೇದ್ದರ ಕೆಳಗೆ ವಿಚಾರಣೆಯಲ್ಲಿದ್ದು, ಮುಂದಿನ ವಿಚಾರಣೆ ದಿನಾಂಕ:10/08/2026 ರಂದು ಆರೋಪಿ ಹಾಜರಾತಿ ಕುರಿತು ಇರುತ್ತದೆ.

		ಔರ್ ಕೈಸಾ ಪರಿನಾಮ ಹೈ.." ಎಂಬ ಹಾಡಿನ ತೂಣುಕನ್ನು ಸೇರಿಸಿ ಸಾಮಾಜಿಕ ಜಾಲತಾಣಗಳಲ್ಲಿ ಹರಿಬಿಟ್ಟು ಸಾರ್ವಜನಿಕ ಶಾಂತತಾ ಭಂಗ ಪಡಿಸುವ ಹುನ್ನಾರ ಮಾಡಿದ ಅಪರಾಧ.	
5.	ಮಾರ್ಕೆಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಪಿ.ಎ.ಆರ್ ನಂ:22/2023 ಕಲಂ:107 ಸಿ.ಆರ್.ಪಿ.ಸಿ	ಎದುರುಗಾರನು ರೌಡಿಶೀಟರ್ ಇದ್ದು, ಮುಂಬರುವ ರಾಜ್ಯ ವಿಧಾನ ಸಭೆ ಚುನಾವಣೆ ಕಾಲಕ್ಕೆ ಯಾವುದಾದರೂ ಸಂಜ್ಞೆಯ ಅಪರಾಧ ಮಾಡುವ ಸಾಧ್ಯತೆ ಇರುವದು ಕಂಡು ಬಂದಿದ್ದರಿಂದ ಮುಂಜಾಗೃತಾ ಕ್ರಮ ಕೈಕೊಳ್ಳಲಾಗಿದೆ.	ದಿನಾಂಕ:04/03/2023 ರಂದು ಬಾಂಡ ಓವರ್ ಆಗಿರುತ್ತದೆ.
6.	ಮಾರ್ಕೆಟ್ ಪೊಲೀಸ್ ಠಾಣೆ ಪಿ.ಎ.ಆರ್.ನಂ:16/2025 ಕಲಂ:126 ಬಿ.ಎನ್.ಎಸ್.ಎಸ್–2023	ಎದುರುಗಾರನು ರೌಡಿಶೀಟರ್ ಇದ್ದು, ಮುಂಬರುವ ಬಸವೇಶ್ವರ ಜಯಂತಿ, ಶಿವಾಜಿ ಜಯಂತಿ, ಬಕ್ರೀದ, ಮೊಹರಮ್, ಗಣೇಶಚತುರ್ಥಿ, ಕರ್ನಾಟಕರಾಜ್ಯೋತ್ಸವ ಕಾಲಕ್ಕೆ ಯಾವುದಾದರೂ ಸಂಜ್ಞೆಯ ಅಪರಾಧ ಮಾಡುವ ಸಾಧ್ಯತೆ ಇರುವದು ಕಂಡು ಬಂದಿದ್ದರಿಂದ ಮುಂಜಾಗೃತಾ ಕ್ರಮ ಕೈಕೊಳ್ಳಲಾಗಿದೆ.	ದಿನಾಂಕ:09/05/2026 ರಂದು ಬಾಂಡ ಓವರ್ ಆಗಿರುತ್ತದೆ.

4. Learned Single Judge had rejected the writ petition observing that an efficacious remedy is available u/S 59 of the ***K.P. Act*** and accordingly had relegated the petitioner to avail such statutory remedy and without entering into the merits has rejected the writ petition. The observations made by the learned Single Judge at paragraph Nos. 2 to 5 reads as hereunder:

> *2. The petitioner's counsel reiterating the grounds has tried to pursued this Court demonstrating that even if allegations and report are accepted in entirety, no case is made out under Section 56 of K.P.Act, 1963.*

3. Learned Additional Government Advocate has raised the primary objection contending that petitioner was heard and he has contested the proceedings and therefore, he has to be relegated to avail a remedy under Section 59 of K.P.Act, 1963.

4. Though this Court grants indulgence where externment orders, being drastic measures, are passed in gross violation of the principles of natural justice, it is not a fit case to grant such indulgence since the petitioner was afforded an opportunity and the order was passed by the authority only after hearing the petitioner. The petitioner's contention that the order is palpably erroneous cannot be a ground to entertain the petition when there is an efficacious remedy under Section 59 of the K.P. Act, 1963. Therefore, this is a fit case to relegate petitioner to avail a remedy of an appeal.

5. For the foregoing reasons, the petition stands dismissed reserving liberty to the petitioner to avail remedy under Section 59 of the K.P.Act, 1963."

6. Learned counsel for the appellant would submit that the learned Single Judge ought to have entertained the writ petition in light of order of externment affecting his fundamental right including the right under Article 21 of the Constitution and the Court ought not to have relegated the petitioner to avail of the statutory remedy.

7. It is submitted that the order of externment was an order passed without jurisdiction insofar as the cases

involving the petitioner involve offences under the provisions of IPC and Cr.P.C which do not fall within the categories of cases stipulated under Section 56 of the ***K.P. Act*** and it is contended that the order is one without jurisdiction and accordingly the restriction regarding entertaining a writ petition would not be applicable. It is further submitted that the power vested in Article 226 of the Constitution could be exercised while waiving of the statutory remedy if exceptions made out for exercise of writ jurisdiction are made out which would include entertaining a writ petition when an order is passed without jurisdiction.

8. Learned Government Advocate on the other hand would contend that the learned Single Judge has merely relegated the petitioner to avail of the remedy of appeal u/S 59 of the ***K.P. Act*** and if that were to be so the relegation of the petitioner to avail of the statutory remedy was correct course of action and no interference is called at this stage. Further it is submitted that the petitioner admittedly is a rowdy sheeter and Court ought not to exercise any discretion

in entertaining the present writ appeal while relegating the petitioner to avail of statutory remedy.

9. Heard both sides.

10. At the outset learned counsel for the petitioner would submit that in the writ petition his relief was not only for setting aside order of externment but for setting aside order whereby the petitioner was included in the Rowdy Sheeter Register. It is however submitted that the challenge to his inclusion in the Rowdy Sheeter Register is not being pressed in the present proceedings. In the light of the same the present writ appeal is being taken up only insofar as challenge of the petitioner as regards the order of externment.

11. The points for consideration are:

(i) Whether the Writ Court in exercise of power under Article 226 of the Constitution could entertain the writ petition even despite availability of statutory remedy u/S ***K.P. Act***?

(ii) Whether the order of externment passed is one without jurisdiction and could be construed to be an exception whereby there could be waiver of statutory remedy and entertaining of a writ petition?

(iii) Whether the order of externment would fall within the categories of cases contemplated u/S 56 (A to H) of the ***K.P. Act***?

12. It must be noticed that the order of externment passed u/S 56 of the ***K.P. Act*** is appealable in terms of Sec. 59 of the ***K.P. Act***. Insofar as such existence of appellate remedy the same is not in dispute. This Court while considering the question of existence of alternative remedy vide order in reference in Criminal Petition No. 200012/2023 and connected matters, in the context of order passed u/S 56 of the ***K.P. Act*** had in its order dated 25.07.2025 considered a reference placed before the Division Bench by orders of the Hon'ble Chief Justice dated 05.04.2023. The Reference Court while referring to the provisions u/S 59 of the ***K.P. Act*** has adverted to the existence of alternative remedy by way

of a writ petition in paragraph no. 13 onwards. The relevant extract of the order in Reference at paragraph nos.13 to 15 reads as follows:

> *"13. Insofar as remedy against an order of externment by way of a Writ Petition under Article 226 of the Constitution, it is clear that if the externment order may have the effect of deprivation of liberty by a procedure contrary to law, in such event, remedy of writ proceedings could be had recourse to. Further, even where an alternative remedy is available, exceptions have been carved out for entertaining a writ petition and among such exceptions is a category of cases where writ petitions are filed for enforcement of fundamental rights.*
>
> *14. Though Section 60 of the Karnataka Police Act provides for finality of orders, it is a settled position that even if an order is stated to be final, the remedy of judicial review by resort to Article 226 of the Constitution remains untouched. The Apex Court in* ***Sangram Singh v. Election Tribunal, Kotah and Another,*** *has held that even when a statute declares a decision to be final, the High Court's power under Article 226 of Constitution remains intact and that the judicial review is part of the rule of law and no statute can completely bar it. The relevant observations are as follows:*
>
> > *"8. It was urged that that cannot be so in election matters because of Section 105 of the Representation of the People Act of 1951 (Act 43 of 1951), a section which was not considered in the earlier case. It runs thus:*

"Every order of the tribunal made under this Act shall be final and conclusive."

It was argued that neither the High Court nor the Supreme Court can itself transgress the law in trying to set right what it considers is an error of law on the part of the court or tribunal whose records are under consideration. It was submitted that the legislature intended the decisions of these tribunals to be final on all matters, whether of fact or of law, accordingly, they cannot be said to commit an error of law when, acting within the ambit of their jurisdiction, they decide and lay down what the law is, for in that sphere their decisions are absolute, as absolute as the decisions of the Supreme Court in its own sphere. Therefore, it was said, the only question that is left open for examination under Article 226 in the case of an Election Tribunal is whether it acted within the scope of its jurisdiction.

9. But this, also, is no longer open to question. The point has been decided by three Constitution Benches of this Court. In Hari Vishnu v. Ahmad Ishaque [AIR 1955 SC 233, 249] the effect of Section 105 of the Representation of the People Act was not considered, but the Court laid down in general terms that the jurisdiction under Article 226 having been conferred by the Constitution, limitations cannot be placed on it except by the Constitution itself: see pages 238 and 242. Section 105 was, however, considered in Durga Shankar Mehta v. Raghuraj Singh [AIR 1954 SC 520, 522] and it was held that that section cannot cut down or affect the overriding powers of this Court under

Article 136. The same rule was applied to Article 226 in Raj Krushna Bose v. Binod Kanungo [(1954) SCR 913, 918] and it was decided that Section 105 cannot take away or whittle down the powers of the High Court under Article 226. Following those decisions we hold that the jurisdiction of the High Court under Article 226 is not taken away or curtailed by Section 105.

10. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105."

> *15. As the order of externment may impinge upon liberty of an individual, it is always open to challenge the validity of such order by contending violation of Article 21 of the Constitution of India by taking recourse to an appropriate writ under Article 226 of the Constitution. No doubt, Writ Petition would be maintainable, albeit whether the Court would entertain the petition or direct the petitioner to avail of substantive remedy under the statute is a matter within the judicial discretion of the Court before which a Writ Petition is filed."*

13. The Division Bench after a detailed consideration has observed that even where alternative remedy is available, externment has been carved out entertaining a writ petition and such exceptions are recognized while referring to the order of the Apex Court in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks (1998 [8] SCC 1)***.

14. The Division Bench at paragraph no. 15 in the order of reference has observed that as an order of externment may impinge upon liberty of an individual, it is always open to challenge the validity of such order by contending violation of Article 21 of the Constitution of India by taking recourse to Article 226 of the Constitution. But observed that whether

the Court in exercise of writ jurisdiction would entertain the petition or direct the petitioner to avail remedy under the statute, is a matter within judicial discretion of the Court and has referred to observation made by the Apex Court in ***M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors. (2023 SCC Online SC 95)***. Thus it is clear that there is no absolute bar for entertaining of writ petition. However whether a writ petition would be entertained is a matter left to the judicial discretion of this Court. In the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks***, the exception for entertaining a writ petition have been detailed. The exceptions include wherein enforcement of fundamental rights are sought or where proceedings are wholly without jurisdiction.

The observation at paragraph nos. 13 to 15 reads as follows:

> *13. Learned counsel for the appellant has contended that since suo motu action under Section 56(4) could be taken only by the High Court and not by the Registrar, the notice*

issued to the appellant was wholly without jurisdiction and, therefore, a writ petition even at that stage was maintainable. The appellant, in these circumstances, was not obliged to wait for the Registrar to complete the proceedings as any further order passed by the Registrar would also have been without jurisdiction.

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court was imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this

point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

15. In the present case the counsel for the petitioner has contended that the order is one without jurisdiction as the order of externment refers to the cases against the petitioner and the provisions of law under which such cases have been filed do not fall within the categories of cases contemplated u/S 56 (a to h) of the ***K.P. Act***.

16. A perusal of the cases made out against the petitioner is in terms of the table extracted supra. The cases against the petitioner relate to offence u/S 87 of the ***K.P. Act*** insofar as the case at Sl. Nos.1 and 2 of the table extracted supra. Such offence does not fall within the offences contemplated under Section 56 of the ***K.P. Act***.

17. Insofar as the cases u/S 160 of the IPC, at sl. No. 3 of the table such case does not fall within the category of offence stipulated at 56(a) of the ***K.P. Act***. Insofar as the offence mentioned in the case at sl. No. 4 relating to Sec. 192 of the BNS the said case would also not fall in the

category of Sec. 56 (a to h) and even if the corresponding Section of IPC is taken, Sec. 192 of BNS would correspond to Sec. 153 of IPC and such offence falls in Chapter VIII of the IPC. Such offence does not fall within the category of offence u/S 56 (a) of the ***K.P. Act***.

18. Insofar as the offence at sl. No. 5, the offence made out is 107 of Cr.P.C. Such offence is not enumerated in Sec.56 (a to h) of the ***K.P. Act***. Insofar as case at sl. No. 6 the offence made out is 126 of BNSS which correspond to Sec.107 Cr.P.C. Even as regards such offence we find that such offence does not fall within the category of Section 56 (a to h) of the ***K.P. Act***.

19. Learned Government Advocate is not in a position to controvert the contention of the petitioner that the offences mentioned in the table which have been relied upon by the authority in passing the externment order do not fall within the category of Sec. 56 (a to h) of the ***K.P. Act***.

20. Learned Government Advocate submits that the petitioner is involved in number of offences, details of which

are mentioned in the table and has been convicted in three of the cases at sl. Nos. 1 to 3 of the table extracted above. However that by itself will not clear the jurisdictional defect. An order u/S 56 of the ***K.P. Act*** must relate to the categories of the offences mentioned u/S 56 (a to h) of the ***K.P. Act*** in the absence of which the special power conferred for externment which in effect amount to curtailment of fundamental right including Article 21 of the Constitution must be in accordance with the provisions of law whereby a restriction is sought to be placed. No order of externment could be passed *de hors* u/S 56 (a to h) of the ***K.P. Act***.

21. Clearly the order passed is one without jurisdiction. Accordingly we find that when an order is without jurisdiction the Court could entertain a writ petition and proceed to adjudicate taking note the violation of fundamental right. Noticing the order is one without jurisdiction the writ petition is maintainable and we deem it proper to entertain the petition. Accordingly, the order of the learned Single Judge is set aside.

22. We have also gone into the correctness of the order impugned taking note that there would be undue delay and no purpose is served by remanding the matter to the learned Single Judge in the light of clear observation that the order passed is one without jurisdiction. Accordingly the impugned order at Annexure-A is set aside and the writ appeal is disposed of in terms of the discussion made above and the appellant is directed to be released forthwith. The points for consideration raised are answered accordingly.

Needless to state power of the authority to take fresh action as per law is reserved.

Sd/-
(S.SUNIL DUTT YADAV)
JUDGE

Sd/-
(K.G.SHANTHI)
JUDGE

BVV
CT:VP
LIST NO.: 1 SL NO.: 11