

**THE HIGH COURT OF MADHYA PRADESH**  
**W.P. No. 29915/ 2018**  
**(Amit Tiwari Vs. State of M.P. and others)**

**Jabalpur,**  
**Dated:26.06.2019**

Shri Om Shankar Pandey, learned counsel for the petitioner.

Shri Pratyush Tripathi, learned G.A. for the respondent/ State.

This petition has been filed by the petitioner under Article 226 of the Constitution of India being aggrieved by the order dated 26.12.2018 passed by the Commissioner, Jabalpur Division arising out of the order dated 22.11.2018 passed by the District Magistrate, Jabalpur whereby the petitioner has been externed from the District of Jabalpur and the adjoining districts for a period of one year on account of his activities.

In brief the facts of the case are that a notice was issued to the petitioner under Section 5(b) of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 as to why the order of externment be not passed against him under the aforesaid Section on account of criminal cases registered against him. Notice was served on the petitioner on 12.11.2018 wherein he was directed to appear before the District Magistrate on 13.11.2018. After his appearance, the petitioner sought time to file reply, however, the matter was reserved for order and on 22.11.2018 itself i.e. immediately after 9 days, final order has been passed wherein the petitioner's criminal antecedents are narrated as earlier 33 cases have been registered against

him under various Sections of IPC and the order of externment has been passed. The aforesaid order has also been affirmed by the Commissioner in an appeal preferred under Section 9 of the *Adhiniyam*.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was not given proper opportunity of hearing, thus the principles of natural justice have been violated.

He has also drawn the attention of this Court to the finding recorded by the Commissioner who has given a finding that the petitioner has not been given proper opportunity of hearing, however, despite recording such a finding the impugned order passed by the District Magistrate has been affirmed. He has further submitted that even according to Section 8 of the *Adhiniyam*, opportunity of hearing is must before passing such an order. Reply has also been filed by the respondent opposing the petition.

Learned G.A. for the respondent/ State has submitted that no illegality has been committed by the learned District Magistrate as the offences committed by the petitioner is in close proximity from the date of passing of the impugned order.

Heard the learned counsel for the parties and perused the record.

The record reveals that the petitioner was issued show cause notice on 12.11.2018, which was served on him on the same date and he was asked to submit his response to the said notice on the next date i.e. 13.11.2018. The impugned order does not reveal as to whether any opportunity of hearing was given to the petitioner or not and the final

order was passed on 22.11.2018 i.e. after a period of 9 days from the date of petitioner's first appearance before the District Magistrate. Apparently, the petitioner was not given proper and adequate opportunity of hearing, which has also been noted by the Commissioner in the appeal. In para 4 of its order, learned Magistrate has observed as under:-

“ अपीलार्थी की ओर से प्रस्तुत दस्तावेजों एवं अधीनस्थ न्यायालय के आलोच्य आदेश का अवलोकन कर प्रकरण का समग्र का अवलोकन किया गया। अपीलार्थी का यह तर्क कि उसे अधीनस्थ न्यायालय द्वारा सुनवाई एवं पक्ष समर्थन का पर्याप्त अवसर प्रदान नहीं किया गया है, प्रमाणित होता है, परन्तु इस न्यायालय द्वारा उसे सुनवाई एवं पक्ष समर्थन का पर्याप्त अवसर प्रदान किया गया है। अपीलार्थी के विरुद्ध वर्ष 2004 से वर्ष 2018 के बीच 33 प्रकरण दर्ज हुए हैं। अपीलार्थी के वर्तमान आपराधिक रिकार्ड का अवलोकन किया गया। अपीलार्थी के विरुद्ध वर्ष 2015 में 05 प्रकरण, वर्ष 2016 में 04 प्रकरण दर्ज हुए हैं, जो गंभीर अपराधों से संबंधित हैं। उपरोक्त से यह तथ्य प्रमाणित होता है कि अपीलार्थी आपराधिक गतिविधियों में संलग्न है और उसके विरुद्ध दर्ज प्रकरण गंभीर अपराधों से संबंधित हैं। अपीलार्थी द्वारा इस न्यायालय के समक्ष ऐसे कोई दस्तावेजी साक्ष्य प्रस्तुत नहीं किए गए, जिससे यह प्रमाणित हो कि वह उसके विरुद्ध दर्ज प्रकरणों में न्यायालय से दोषमुक्त हो चुका है। उक्त स्थिति में अपीलार्थी के विरुद्ध की गई जिलाबदर की कार्यवाही उपयुक्त है और अधीनस्थ न्यायालय के आलोच्य आदेश में किसी प्रकार के हस्तक्षेप की आवश्यकता नहीं है।”

The aforesaid finding recorded by the Commissioner is clearly perverse and cannot be sustained in the eyes of law. Not only that, even the show-cause notice issued to the petitioner reveals that it is not even mentioned in the said notice as to how many cases are registered against the petitioner. The only fact which has been mentioned in the show-cause notice is that a case was registered against the petitioner on 01.11.2018 under the Arms Act at Police Station Adhartal, wherein a country made pistol and cartridges were recovered at the instance of the petitioner and holding the same to be a ground for invoking the provisions

of the *Adhinyam*, proceedings have been initiated and the order has been passed in which the entire detail of the criminal cases registered against the petitioner have been mentioned. Apparently, the petitioner was at a total loss to understand the implication of the show cause notice which led to the findings recorded by the District Magistrate in the impugned order as he was never given any adequate opportunity of hearing to rebut or to assail the show-cause notice on merits.

In view of the same, the impugned orders dated 26.12.2018 and 22.11.2018 cannot be sustained as the same have been passed in violation of the Principles of Natural Justice and are hereby quashed.

C.C. As per rules.

**(Subodh Abhyankar)**  
**Judge**

Vikram