



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (APL) NO. 1256 OF 2022

Atulkumar Brijbhushan Verma,
Age 54 years, Occupation:Business,
Currently residing at:Room No. A/36/556,
Satyavijay Society, Charkop Sector 5,
Kandivali (West), Mumbai.

.....Applicant

Vs.

The State of Maharashtra
(through Kasturbha Marg Police Station,
Mumbai).

.....Respondent

Mr. Premala Krishnan a/w Mr. Siddharth Pimpale & Mr. Prashant B. for the Applicant.

Smt. Anamika Malhotra, Addl.PP. for the Respondent-State.

PS.I. Mr. C. D. Dalvi, Kasturba Marg Police Station, Mumbai present.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.

RESERVED ON : 19th JULY 2024.

PRONOUNCED ON : 30th JULY 2024.

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

1) Rule. Rule made returnable forthwith. With the consent of learned counsels for both the parties, the Application is heard finally.

2) The Applicant seeks quashing of proceedings of C.C. No. 957/PW/2020 pending before the learned Metropolitan Magistrate, Borivali, Mumbai, arising out of C. R. No. 101 of 2018 dated 22nd February 2018 registered with the Kasturba Marg Police Station, Mumbai for the offenses punishable under Sections 308, 294 & 114 read with 34 of the Indian Penal Code, 1860 (I.P.C.) and Sections 3, 8(4), 8(5) & 8(6) of the

Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (working therein) Act, 2016 (the Act).

3) It is the case of the Respondent No. 2-State, as discerned from the First Information Report (F.I.R.) that, on reliable information it was learnt that 'Ellora Bar and Restaurant' was operating without a licence required under the Act and obscene dances were being performed by girls in the Bar as waitresses. The establishment was owned by the co-accused. F.I.R. was registered on the said allegations wherein the Applicant herein was present as customer in the Bar. A Final Report dated 21st December 2019 was filed pursuant to the investigation against the Owner, the Manager, Cashier, Customers and Guests present in the Bar etc., in the Court of learned Metropolitan Magistrate, Borivali, Mumbai.

4) Mr. Premala Krishnan learned counsel appeared for the Applicant and Smt. Anamika Malhotra, learned Addl.PP. represented the State.

5) Learned counsel for the Applicant contended that, there was no specific allegation against the Applicant and he was a mere customer in the Restaurant. That, the material brought on record, even if accepted as it is to be true, does not make out any offense against the Applicant. On this basis it was submitted that, when the ingredients of the alleged offenses were not made out, there was no question of the Applicant being made to

face the trial.

6) On the other hand, the learned Addl.PP. representing the Respondent-State submitted that, the name of Applicant was clearly stated in the F.I.R. and that, the material collected in the charge-sheet indicated his presence at the spot of incident and therefore, the Application deserves to be dismissed.

7) Having heard the learned counsel for the rival parties, we have perused the F.I.R., charge-sheet and the material placed on record including the statements of witnesses as recorded by the police officials. There is no allegation against the Applicant demonstrating that, the ingredients of the alleged offenses could be said to be present against him. A perusal of the charge-sheet shows that, the Applicant along with other accused persons, are alleged to have also committed offenses under Sections 294 & 114 of the I.P.C.

8) Section 294 reads as follows :

“294. Obscene acts and songs. - Whoever, to the annoyance of others -

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

9) Section 114 reads as follows :

“114. Abettor present when offense is committed. - Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offense for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offense.”

10) A perusal of the above quoted provisions clearly indicate that, for attracting offense under Section 294 of the I.P.C., a person against whom the offense is alleged said to have indulged in any obscene act at a public place. A perusal of the material on record shows that, no such allegations are made against the Applicant at all. Similarly, as per Section 114 of the I.P.C., a person is liable when he is an abettor present when the alleged offense is committed. The material on record does not indicate any specific act on the part of Applicant to qualify him as ‘abettor’.

11) Similarly, as regards the provisions of the Act of 2016, mere mentioning the name of Applicant in the F.I.R. and the charge-sheet would not suffice and there is lack of material to indicate that, the ingredients of the offenses alleged under the said Act could be said to be present against the Applicant.

12) In the case of *State of Haryana and Others Vs. Bhajan Lal and Others*¹, the Hon’ble Supreme Court had laid down certain tests to verify as to whether an accused person needs to be made to face a trial or the F.I.R.

1. 1992 Supp. (1) SCC 335.

can be quashed. It has been observed in paragraph 102 as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offense or make out a case against the accused.

(2) Where the allegations in the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offense, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or the complaint and the evidence collected in support of the same do not disclose the commission of any offense and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a

cognizable offense, but constitute only a non-cognizable offense, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13) A perusal of the above quoted paragraph would show that, the case of Applicant is covered in the first three clauses thereof, as no case is made out against him in respect of the alleged offenses, even if the F.I.R. and other material on record is accepted. The name of Applicant is merely mentioned along with the other accused persons and therefore, the present Application deserves to be allowed.

14) In an earlier decision in the case of *Nilesh N. Gadge Vs. State of*

*Maharashtra and Another*², this Court while relying upon other precedents of this Court has observed :

“7. In case of Criminal Writ Petition No. 4603 of 2021 decided on 6th September 2022, Section 294 of the I.P.C. was invoked along with other provisions. The factual matrix of the said case would indicate that, the accused therein was present at the spot when the ladies were dancing in obscene manner. This Court held that no specific allegations were made against him. Nor any specific role was attributed to the accused. He was present at the place where raid was conducted...”

15) Even in the factual matrix of the present matter, there is no role attributed to the Applicant save and except that, he was present in the Bar as a customer.

16) In view of the above, the Application is allowed.

16.1) The proceedings of C.C. No. 957/PW/2020 pending before the learned Metropolitan Magistrate, Borivali, Mumbai, arising out of C. R. No. 101 of 2018 dated 22nd February 2018 registered with the Kasturba Marg Police Station, Mumbai, for the offenses punishable under Sections 308, 294 & 114 read with 34 of the I.P.C. and Sections 3, 8(4), 8(5) & 8(6) of the Act, *qua* this Applicant only, are quashed and set aside.

17) Rule is made absolute in the aforesaid terms.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

2. Application No. 1032 of 2022 decided on 21st March 2024.