



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2376 OF 2023

Mitesh Ramesh Punmiya,
Age : 34 years, Occupation : Service,
R/at : 326/13, Ratrani CHS, Charkop,
Sector 3, Near Apna Bazaar, Kandivali-West,
Mumbai – 400 067.

.....Petitioner

Vs.

The State of Maharashtra,
Through Senior Police Inspector,
Nagpada Police Station.

.....Respondent

Mr. Rutuj Warick a/w Mr. Shubhankar Avhad i/b Mr. Anuj Tiwari for the
Petitioner.

Mr. Vinod Chate, A.P.P. for the Respondent-State.

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

RESERVED ON : 5th SEPTEMBER 2024.

PRONOUNCED ON : 10th SEPTEMBER 2024.

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

1) The Petitioner seeks to challenge criminal proceedings bearing C.C. No. 61271/PS/2016 pending before the Additional Chief Judicial Magistrate, Mazgaon, Mumbai, arising out of C.R. No. 66 of 2016 dated 19th February 2016 registered with Nagpada Police Station, Mumbai for the offenses punishable under Sections 294 & 114 read with 34 of the Indian Penal Code (I.P.C.) and Section 131(aa) of the Maharashtra Police Act.

2) The case of prosecution is that, on 18th February 2016 the

informant-Mr. Mahesh Arun Choure, a Police Constable attached to the Social Work Department of Mumbai Police, was on surveillance duty. On receipt of secret information, which he shared with the Police Department, a raiding party was assembled and reached to Sea Princess Bar and Restaurant and found certain objectionable activities taking place in the said Restaurant. The raiding party saw women masquerading as waitresses dancing in obscene manner and customers throwing Indian currency notes towards the women. The men stewards and waiters were collecting the said money. It was also found that, the customers were encouraging the dancing women to make obscene gestures while dancing. The Applicant herein was found to be one of the customers watching the obscene dance and acts of the women. The Police recorded Spot Panchanama and the informant lodged the report leading to registration of the F.I.R.

3) The Petition was admitted by an Order dated 6th September 2023 passed by this Court. The proceedings in the trial were also stayed in terms of the said Order.

4) Mr. Rutuj Warick, learned counsel appears for the Petitioner and Mr. Vinod Chate, learned A.P.P represents the State.

5) Mr. Warick, relying on the decision of this Court in the case of *Mr. Rushabh Minishkumar Mehta and Another Vs. The State of Maharashtra*¹ contended that, merely being present in a situation where

1. Criminal Writ Petition (Stamp) No. 4799 of 2020 decided on 14th January 2021.

obscene acts are done by another person, where he is merely a spectator does not attract the provisions of Sections 294 and 114 of the I.P.C. He further submits that, there is no allegation against the Petitioner that he indulged in any obscene act and thus he is not liable to be prosecuted for the alleged offense. He therefore prays that the Petition be allowed and the criminal proceedings be quashed.

6) Mr. Chate drew our attention to the contents of F.I.R. wherein according to him a specific role has been attributed to a list of persons including the Petitioner, that of encouraging the women in the Bar and Restaurant, to dance and make obscene gestures. He submits that, this amounts to participating in the commission of offenses as alleged and hence the Petitioner is liable to be prosecuted. He also read the statement of one of the members of the Police raiding party namely of PI. Gaju Bhaguji Bidkar. The statement also reiterates the content in the F.I.R.

7) We have heard both the counsels and perused the documents on record with their assistance.

8) Section 294 of the I.P.C. 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.”

8.1) Section 114 of the I.P.C. 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.”

9) A perusal of the provisions of bare section indicates that, in order to attract the ingredients of the aforesaid offenses, it is necessary that, the accused person indulges in doing any obscene act in a public place or singing, reciting or uttering any obscene song in or near a public place. There is no material on record to indicate that, the Petitioner who is either doing any obscene act or singing or uttering any obscene song. There is only a generic statement pertaining to the customers found in the Bar and Restaurant that they were enjoying the show and ‘encouraging’ the women artistes. The Petitioner is not found to have been doing any explicit act that can demonstrate an external manifestation of the term ‘encouraging’. He was not found to be throwing notes of Indian currency on the dancing women. Furthermore there is also no material to suggest that, the Petitioner was an abettor present when the offense was committed.

10) In a case of *Manish Parshottam Rughwani and Others Vs. The*

*State of Maharashtra and Another*², a coordinate Bench of this Court has held that, persons cannot be prosecuted for merely being present in the Bar and Restaurant at the relevant time, when no specific overt act is attributed to them.

11) We find that the precedents of this Court in the cases of *Manish Parshottam Rughwani (supra)*, *Mr. Rushabh Minishkumar Mehta (supra)* and *Nirav Raval and Others Vs. The State of Maharashtra and Another*³, are applicable to the facts of the present case. We have no hesitation in holding that, no offense is made out *qua* the Petitioner herein.

11.1) In view of the above, Petition is allowed. Rule is accordingly made absolute in terms of prayer clauses (a) & (b).

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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2. Criminal Writ Petition (Stamp) No. 4343 of 2024 decided on 5th April 2024.

3. Criminal Writ Petition No. 1708 of 2024 decided on 12th July 2024.