



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2476 OF 2023

Santosh Paul Rodrigues,
Aged about 43 years, Occupation : Service,
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.....Petitioner

Vs.

The State of Maharashtra,
(At the instance of Dahisar Police Station).

.....Respondent

Mr. Chaitanya Malgaonkar a/w Mr. Dharmesh Shah, Mr. Nikhil Agarwal, Mr. Punit Singh i/b. Mr. Melwyn Pereira for the Petitioner.
Mr. Ajay Patil, A.P.P. for the Respondent-State.

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

RESERVED ON : 12th SEPTEMBER, 2024.

PRONOUNCED ON : 19th SEPTEMBER, 2024.

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

1) Petitioner seeks quashing of criminal proceeding bearing C.C. No. 2593/PS/2016 pending on the file of learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai arising out of C.R. No. 171 of 2016 dated 14th April 2016 registered with the Dahisar Police Station, Mumbai for the

offenses punishable under Sections 294, 114 and 34 of the Indian Penal Code (I.P.C.).

2) The case of prosecution is that, on 14th April 2016, Police Constable one Shri. Mohan More attached to the Social Service Branch of Crime Branch, Mumbai received secret information that, there some illegal activities were being conducted in the New Park Side Bar and Restaurant where more than four women referred to as Bar Girls were dancing and making obscene gestures. A raiding party was organized by the Police to raid the said premises. It was found that, there was an orchestra playing songs on which the girls were dancing to entertain customers sitting in the restaurant. The girls were making provocative gestures and were trying to get physical with the customers. The owners of the Bar, Manager, another Manager-cum-Cashier and 9 stewards/waiters alongwith 11 customers were apprehended by the raiding party. The Petitioner herein was one of the waiters, serving the customers in the Bar/Restaurant.

3) By an Order dated 18th June 2024, the Petition was admitted and the trial was directed to be stayed during the pendency of present Petition.

4) Mr. Chaitanya Malgaonkar, learned counsel appears for the Petitioner and Mr. Ajay Patil, learned A.P.P. represents the State.

5) Mr. Malgaonkar, 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 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.

5.1) Mr. Malgaonkar also placed reliance on a recent decision of this Court in the case of *Mitesh Ramesh Punmiya Vs. The State of Maharashtra*², in which 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 him.

6) Mr. Patil drew our attention to the contents of F.I.R. and chargesheet wherein according to him a specific role has been attributed to a list of persons including the Petitioner, that of serving the customers in the Bar and Restaurant and facilitating the customers to enjoy the entertainment.

6.1) 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 informant and other witnesses, who have stated that, the owner of the Bar, its Manager, Cashier, waiters and customers were encouraging the women to dance and make

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

2. Criminal Writ Petition No. 2376 of 2023 decided on 10th September 2024.

provocative gestures.

7) We have heard the counsel for the parties and perused the 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. The

Petitioner was serving as a waiter in the said Restaurant and there is no allegation against him that he himself was indulging in any of the obscene act or was abetting it.

9.1) There is only a generic statement of the informant and other witnesses that, the waiters were also encouraging the women artists to dance in an obscene and provocative manner. 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*³ 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. Admittedly, the Petitioner in the present case was a mere employee of the owner of Bar and he is found to be discharging his duty of serving the customers food and drink as per his employment profile.

11) We find that, the precedents of this Court in the cases of *Mr. Rushabh Minishkumar Mehta (supra)*, *Mitesh Ramesh Punmiya (supra)*, *Manish Parshottam Rughwani (supra)* and *Nirav Raval and Others Vs. The*

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

*State of Maharashtra and Another*⁴, 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 clause (c).

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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