

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 251 OF 2005

Sanjaykumar S/o Kashinath Jaiswal,
Age. 41 years, Occu. Business,
R/o. Sy. No. 54/2, Plot No. 2,
Datta Mandir Chowk, Agra Road,
Deopur, Dhule, Tq. & Dist. Dhule. ... Petitioner...

VERSUS

1. The State of Maharashtra
2. Divisional Commissioner, Nashik
Division, Nashik
3. District Magistrate, Dhule,
Tq. & Dist. Dhule. ... Respondents...

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Advocate for Petitioner : Mr C R Deshpande
APP for Respondents: Mr P G Borade

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CORAM : V.K. JADHAV, J.

Dated: October 06, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the order dated 31.7.2004 passed by the Additional District Magistrate, Dhule and order dated 24.5.2005 passed by the Divisional Commissioner, Nashik Division, Nashik thereby confirming the order passed by the Additional District Magistrate, the petitioner preferred this Writ Petition.

2. Brief facts, giving rise to the present writ petition are as follows :-

The petitioner is running one restaurant/eating house at Dhule named and styled as 'Sneha Restaurant and Eating house'. The petitioner has been issued license for the said restaurant by the licensing authority from the Department of food and drug Administration, Dhule and the same has been renewed from time to time till 31.12.2006. On the basis of the said license, the petitioner has started his business of eating house on plot No.2, Datta Mandir Chowk, Dhule. Said eating house has been registered with the District Magistrate, Dhule as required by the provisions of the Bombay Police Act. Certificate of registration dated 29.9.2001 has been issued by the Additional District Magistrate, Dhule and said certificate has been renewed up to 1.1.2002. Though, the petitioner had applied for renewal of the license, but it was not renewed. On 13.6.2002 respondent no.3 had issued one notice to the petitioner contending therein that, in Azad Nagar police station Crime no.181/1987 has been registered against the petitioner for the offence punishable under section

341, 448 of the Indian Penal Code and a criminal case is still pending. Thus, the petitioner was called upon to show cause as to why his certificate of registration should not be cancelled. The petitioner had submitted his reply to the said notice. By order dated 16.8.2002 respondent No.3, the District Magistrate Dhule cancelled the licence bearing No.13/2001 issued in favour of the petitioner. Being aggrieved by the same, the petitioner had preferred an appeal No.17/2002 and by order dated 29.7.2003 the learned Divisional Commissioner, Nashik Division, Nashik pleased to allow the said appeal partly and the case has been remitted back to the District Magistrate, Dhule for making a fresh inquiry and to pass appropriate order. After remand of the case, the Additional District Magistrate by order dated 31.7.2004 confirmed the order dated 16.8.2002 passed earlier. Being aggrieved by the same, the petitioner again approached to the Divisional commissioner, Nashik by filing an appeal No.19/2004. By order dated 24.5.2005 the learned Divisional Commissioner, Nashik Division, Nashik dismissed the said appeal. Hence, this Criminal Writ Petition.

3. The learned counsel for the petitioner submits that, the Superintendent of Police, Dhule by his report dated 24.1.2001 and 12.3.2001 has given no objection for issuance of the license for eating house and as such on 29.9.2001 registration certificate has been issued to the petitioner. The detail inquiry about feasibility of said eating house and maintenance of the law and order was considered at that time. As regards to crime no.181/1987 numbered as STCC No.5692/1987 is concerned, same has been disposed of as compounded and accordingly, the accused therein came to be acquitted. The learned counsel submits that in a show cause notice dated 13.6.2002, crime no.181/1987 and crime No.38/1997 were only referred. So far as crime No.181/1987 is concerned, as stated earlier, same came to be disposed off on 17.2.1997 i.e. much prior to the eating licence granted in favour of the petitioner. So far as crime No.38/1997 which was numbered before the Judicial Magistrate First Class, Dhule as RCC No.51/1997, present petitioner was not an accused in the said case and said case also disposed off in the December, 1998 and the learned Magistrate has

acquitted all the accused persons named in the said case. Learned counsel submits that, after remand, the learned District Magistrate has considered crime No.18/2003 and one another crime no.23/2004 allegedly registered against the present petitioner. Learned counsel submits that, those crimes were not referred in earlier show cause notice or there is no question of referring those crimes in the earlier show cause notice and for the first time, while passing the impugned order dated 31.7.2004 the learned Magistrate has considered the said registration of the crime. Learned counsel submits that, even the learned District Magistrate has not bothered to give an opportunity to the petitioner to explain about those registration of the crime. The approach of the learned District Magistrate, Dhule is incorrect, improper and illegal and the learned Additional Commissioner has also committed an error of law while confirming the said order. The learned counsel submits that, at present, said area is surrounded by eating houses, other hotels and business place and the conditions as exists at the time of issuance of the show cause notice has now been

considerably changed.

4. The learned APP submits that, after remand the learned District Magistrate has considered the registration of crime against the present petitioners and observed that, said eating house is situated in the crowdly area within a distance of 30 meters from the traffic signal. It has also observed in the report that petitioner is having a criminal tendency and, if, such a person is permitted to run a eating house in the said sensitive area, that would create law and order problem. Learned APP submits that, in view of the above the learned District Magistrate had rightly cancelled the license issued in favour of the petitioner in respect of his “Sneha Restaurant and eating house” and said order is accordingly confirmed in the appeal.

5. In response to the query made by this Court, one Shri Dattatraya Eknath Shejul Tahsildar, (Revenue), in the office of the Collector, Dhule has filed his affidavit-in-reply on behalf of respondent no.3 and pointed out that the Home department had issued a letter dated

22.12.2015 whereby license required for conducting the business of eating house, Eating House Registration Certificate alongwith other license had been repealed. He has further pointed out that District Magistrate, Dhule issued a notification dated 22.3.2016 in consonance with a letter issued by the Jt. Secretary Home Department. It is thus stated in the affidavit that the issue regarding license of Eating House of Sneha Restaurant of the petitioner was terminated on 16.8.2002 and as per the recent development in District Dhule, the District Magistrate, Dhule has no right to issue any license at any place in the premises of Dhule for such type of Eating House.

6. On careful perusal of the order passed by the learned District Magistrate, Dhule after remand, it appears that, the learned Magistrate has considered the Crime no.181/1987 and further Crime No.38/1997. It is also mentioned in the impugned order that said crime No.181/1987 which subsequently registered as Criminal Case No.5692/1987 before the Magistrate, came to be compounded and accordingly the petitioner was

acquitted way back in the year 1997 in terms of the said compounding of an offence. Furthermore, so far as crime No.38/1997 which is numbered as RCC No.51/1997 before the Magistrate Dhule is concerned, on perusal of the copy of the judgment delivered on 21.12.1998 in the said case, I find that present petitioner was not impleaded as an accused. Even he is not named as a witness in that case. Even in the said case also learned Magistrate has acquitted the accused nos. 1 to 5, by judgment and order dated 21.12.1998. Thus, in any way those two cases were not helpful for the authorities even to think about the cancellation of the license granted in favour of the petitioner. There is no question of maintenance of any law and order problem since those cases were disposed off in the year 1997 and 1998 respectively. In the show cause notice dated 13.6.2002 the reference has been given to only those two cases. After remand of the matter, if the authorities found registration of some other crimes against the present petitioner, then it would have been appropriate on the part of the authorities to issue a fresh notice to the petitioner by referring the said crime nos.18/2003

and 23/2004. It thus appears that the learned District Magistrate, Dhule after remand for the first time considered registration of the said two crimes and without giving an opportunity to the petitioner to explain about the said registration of the crime passed the impugned order. Even, the learned Divisional Commissioner has also not applied his mind to the said aspect.

7. Furthermore, by filing the additional affidavit, in paragraph No.10 it is stated that, the District Magistrate, Dhule now issued a notification dated 22.3.2016 which runs as under :-

“In accordance with the directions issued by the Government of Maharashtra through Home Department vide letter dated 22/12/2015 it is hereby notified that the Rules for keeping Places of Public entertainment [Eating House, Mess and Restaurant, Lodging and Boarding] in Dhule District are hereby stand repealed w.e.f. the date of the publication of this notification in the official gazette.”

8. In view of the above discussion, the order of cancellation of registration on the basis of show cause notice dated 13.6.2002 is not sustainable and further if at all the authority wants to issue a fresh notice on the basis of subsequent registration of the crime against the petitioner, the authorities i.e. learned District Magistrate, Dhule at present has no right to issue any license at any place in the premises of Dhule.

9. In view of the above, writ petition is hereby allowed in terms of prayer clause "B" & "C". Rule is made absolute in the above terms. Criminal Writ Petition accordingly disposed of.

sd/-
(V.K. JADHAV)
JUDGE

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aaa/-