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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO.127 OF 2016**

1. Amardeep Singh Chudha,
Age: 36 years, Occu: Engineer,
residing at 32, Mithibai Bldg.,
A.D. Marg, Sewree, Mumbai-400 015.
2. Sanjeev Ramkrishna Mayekar,
Age: 59 years, Occu: Service,
Residing at 196/B, Gaiwadi,
Girgaum, Mumbai - 400 004.
3. Raj Mahadeo Barve,
Age: 58 years, Occu: Business,
Residing at 45, Nana Shankaseth
Smriti, Thakurdwar, Mumbai-400 002.
4. Mangelal Chunnilal Jain,
Age: 54 years, Occu: Service,
Residing at 604, Silver Line, T.P.S.
Road, Borivali (W), Mumbai.
5. Kishore Durlab Goher,
Age: 57 years, Occu: Service,
Residing at 41, Darabanga House,
G.B. Deshmukh Marg, Mumbai-400 026.
6. Manoj Prakash Jadhav,
Age: 30, Occu: Business,
Residing at Laxmi Nivas Room No.1, 11th
Road, Santacruz (W), Mumbai-400 055.
7. Anant D. Bidave,,
Age: 38 years, Occu: Doctor,
Residing at J.J. Hospital Campus,
Byculla, Mumbai-400 008.
8. Hiren Keslikar,
Age: 35 years, Occu: Service,
Residing at 89, B 001, Evershine
City, Vasai (E).

9. Sanjay C. Shukla,
Age: 34 years, Occu: Service,
Residing at Moonlight Building,
A Wing 101, Unitech Road,
Virar (W).
10. Anil D. Dalvi,
Age: 35 years, Occu: Service,
Residing at 41 J.J. Hospital,
Byculla, Mumbai- 400 008.
11. Sachin N. Navala,
Age: 27 years, Occu: Service,
Residing at Health Unit Palghar,
Room No.1, Palghar(W).
12. Siddharth S. Kamble,
Age: 24 years, Occu: Service,
Residing at 11, Health Unit Palghar,
Palghar (W).
13. Sunilkumar P. Bohra,
Age: 48 years, Occu: Business,
Residing at A/302, Om Residency,
Bhoiwada, Parel, Mumbai- 400 012. ..Petitioners.

V/s.

1. The State of Maharashtra
(Amboli police station)
2. Jagjit Girmile
Age: 35 years, 114/912, M.H.B.
Colony, Gate No.8 Malvani,
Malad (W), Mumbai- 400 095. ..Respondents.

Mr.Rajendra Shirodkar i/b. Mr. Archit Sakhalkar for the petitioners.

Mrs.U.V. Kejriwal, APP for respondent-State.

**CORAM : NARESH H. PATIL AND
A.M. BADAR, JJ.**

DATED : 10TH MARCH, 2016

ORAL JUDGMENT (PER A.M.BADAR, J.)

1. On oral prayer made by learned counsel for the petitioners, respondent No.2 is allowed to be deleted at his risk.

Heard. Rule. Rule, made returnable forthwith. By consent of the parties, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), petitioners are praying for quashing of the F.I.R. registered against them by Amboli police station, Mumbai vide C.R. No. 388/2015 for offence punishable under section 294 read with 34 of Indian Penal Code, 1860 (for short the 'I.P.C.').

3. The facts in nutshell leading to the institution of the present petition can be summarized as under :-

On 12th December, 2015 informant Jagjit Girmile, a Journalist, initially informed the Assistant Commissioner of Police, Andheri, Mumbai that a private party is going in Flat C-201, Evershine Cosmic, Kureshi Compound, Andheri (W), Mumbai wherein some women dressed scantily are dancing and making obscene gestures to the customers and that the

customers present thereat are showering money on them for encouraging them to make obscene gestures. In pursuant to this information, the Assistant Commissioner of Police, informed police personnel from Amboli and Oshiwara police stations to take necessary action. Thereafter, police organized for a raid by arranging two panch witnesses. Police party along with panch witnesses went to the said flat and rang the door bell. When a woman opened the door of that flat, police entered in the flat and they heard sound of music coming from the inner room. They found that in the last room of that flat, six women, scantily dressed, were dancing and men sitting there were consuming liquor. Police further found that some people were showering money on those women. Police then took charge of the articles, such as disco light, speaker, two bottles of liquor, etc.

4. By issuing notice under section 46(1) of the Cr. P.C., those six women, so also the owner of the flat were asked to attend police station in the next morning. Men present there were taken to the police station for further action. Subsequently, on the basis of the report lodged by Mr.Jagjit Girmile, crime in question came to be registered against

present petitioners as well as others for the offence punishable under section 294 read with 34 of I.P.C. By the present petition, petitioners are praying for quashing the said F.I.R.

5. Learned counsel appearing for the petitioners vehemently argued that the flat in question cannot be said to be a public place where anyone could have access. Whatever activities is alleged by police took place in the flat, which cannot be said to be a public place. As such, it cannot be said that the petitioners / accused in the said crime are *prima facie* liable for penal consequences as provided in section 294 of the I.P.C. Therefore, according to learned counsel for the petitioner, the petition deserves to be allowed.

6. As against this, according to learned APP, on the basis of information received, raid was conducted wherein it is found that those women were indulging in obscene act at the place of incident and those obscene acts were being viewed by petitioners as well as other persons. As such, according to learned APP, *prima facie*, it cannot be said that the provisions of section 294 of I.P.C. are not attracted.

7. Upon being asked by this Court, after taking instructions from the concerned police officer present in the Court, learned APP submitted that except section 294 read with 34 of I.P.C., no other offence is levelled against accused persons including petitioners in Crime No.388/2015. According to learned APP, the Investigating Officer has found that persons accused in the said crime have not committed any offence, except the offence punishable under section 294 of I.P.C.

8. We have perused the material placed on record, including the F.I.R. as well as the pleadings of the parties. We have given careful consideration to the rival submissions advanced by the parties.

9. Considering the challenge in the instant petition, short question that arises for consideration is,

“ Whether any obscene act in a private place causing no annoyance of others constitutes an offence punishable under section 294 of I.P.C. ? ”

10. Before adverting to this aspect on merits, it would be useful to reproduce the provisions of section 294 of I.P.C. for ready reference. This section reads as under:-

“ 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.”

11. From the perusal of the above penal provision which is invoked against petitioners / accused persons, it is seen that any obscene act for constituting offence punishable under section 294 of I.P.C. needs to be done in any public place and the same is also required to cause an annoyance to others. Similarly, if any person recites or utters obscene song, ballad or words, in or near any public place, thereby causing annoyance to others, then he can be said to have committed

an offence punishable under section 294 of I.P.C. Keeping in mind these ingredients of section 294 of I.P.C., let us examine whether averments made by informant *prima facie* fulfills requirement of the offence punishable under section 204 of I.P.C.

12. The main ingredient of section 294 of I.P.C. is commission of an obscene act at a public place. The Black's Law Dictionary, Eight Edition defines public place as under:-

“public place - Any location that the local, state or national government maintains for the use of the public, such as a highway, part, or public building. ”

13. Section 294 of I.P.C. is meant for punishing persons indulging in obscene act in any public place causing annoyance to others. As such, the places where such obscene act is committed needs to be a public place and meant for use of public at large. Public must have free access to such place so as to call it a public place. The place where public have no right rather a lawful right to enter into, cannot be said to be a public place for invoking the penal provisions of section 294 of I.P.C. for calling a place as a public place. It must be shown

that public at large has a right to have free ingress to such place. Viewed from this angle, the flat / apartment in building owned by some private person meant for private use of such owner cannot be said to be a public place. It is not the case of respondents that any member of the public has free access to the flat bearing Flat No.C-201 located in Evershine Cosmic, Kureshi Compound, Andheri (W), Mumbai. For resorting to the penal provision of section 294 of I.P.C., the prosecution is obliged to make out that the obscene act were performed at a public place or singing, recitals, or utterances of any obscene song, ballad or words were done in any public place.

14. Careful perusal of the F.I.R. lodged by informant Mr.Jagjit Girmile and that too after conducting raid by police along with panch witnesses does not show that the Flat No.C-201, Evershine Cosmic, Kureshi Compound, Andheri (W), Mumbai where the offence is alleged to have taken place is a public place, wherein any member of the public had free and lawful right to enter into. The F.I.R. in question was lodged on the basis of prior intimation given by the informant Jagjit Girmile to police and after conducting raid in presence of two panch witnesses by police squad. Naturally, the F.I.R. which is

lodged subsequent to the raid is reflecting the entire episode. The F.I.R. in question vividly describes each and every particulars of the event right from the receipt of information, preparation for raid and post raid events allegedly occurred in Flat No.C-201 Evershine Cosmic, Kureshi Compound, Andheri (W), Mumbai witnessed by the raiding police party. There is no whisper in the F.I.R. that sound of music was being emitted out from the flat in question and that too, to the annoyance of the neighbourers and others. Rather, perusal of the F.I.R. reveals that when the raiding party rang the door bell and when members of the raiding party entered inside the flat, they heard sound of music coming from the last room of the flat. The F.I.R. does not disclose that sound of music coming from the flat was annoying others. Similarly, the F.I.R. lodged after the raid does not indicate that the activities which were allegedly happening inside the flat were causing annoyance to neighbourers or others. As such, even if the averments and allegations made in the F.I.R. are accepted as it is, then also, it cannot be said that the material contained in the F.I.R. discloses any cognisable offence, even *prima facie*. Obscene act done in a private place or viewed in privacy is not covered by the provisions of section 294 of I.P.C.

15. At this juncture it would be pertinent to note that the provisions under section 482 of CR.P.C. enables this Court to quash criminal proceedings even in those cases which are not compoundable. Such power is to be exercised sparingly and with caution. To secure the ends of justice and to prevent abuse of process of Court, such power is required to be exercised in appropriate cases. In case of **State of Harayana and others V/s. Ch. Bhajan Lal and Ors.** reported in **1992 Cri. L.J. 527**, Hon'ble Supreme Court has carved out the categories where the High Court may exercise powers under Article 226 of the Constitution or under section 482 of the Cr.P.C. One of such category is where the allegations made in the F.I.R. or alleged in complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. In the case in hand, even if the averments made in the F.I.R. lodged meticulously after conducting raid at the spot of incident are taken at their face value and accepted in their entirety, do not *prima facie* constitute an offence punishable under section 294 of I.P.C. Obscene act alleged in the F.I.R., as per averments made in the F.I.R., was not being conducted

at a public place and that too to the annoyance of others.

16. Before parting with the judgment, we deem it proper to put on record that recitals in the F.I.R. itself show that after entering inside the flat, raiding party heard sound of music coming from inside the flat bearing No.C-201, Evershine Cosmic, Kureshi Compound, Andheri (W), Mumbai wherein the incident is alleged to have happened. The F.I.R. does not reflect annoyance, if any, being caused to the public because of activities allegedly going on inside the flat. It cannot be said that police officers from the raiding party as well as the officer who registered the F.I.R. were aware of the provisions of section 294 of I.P.C. Recitals in the F.I.R. goes to show that incident alleged therein had not happened in a public place. As such, we fail to understand as to how the F.I.R. came to be registered only for the offence punishable under section 294 read with 34 of I.P.C. Police officer present in the Court today, at the time of hearing upon our query has categorically informed to learned APP that no other offence is attracted in the instant case. In these circumstances, we deem it appropriate to send a copy of this judgment for appraisal of the Commissioner of Police, Mumbai. Registry (Judicial) to

take appropriate steps for forwarding a copy of this judgment for appraisal of the Commissioner of Police, Mumbai.

17. In the result, the petitioners succeed. The petition is allowed. Rule is made absolute in terms of prayer clause (a). The F.I.R.No.388/2015 registered against the petitioners at Amboli police station, Mumbai for offence punishable under section 294 read with 34 of the Indian Penal Code is quashed and set aside.

(A.M.BADAR, J.)

(NARESH H. PATIL, J.)