

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4033 OF 2017

Mukteshwar s/o Sidram Deshmane,
Age-38 years, Occu:Business,
R/o-Patil Galli, AUSA,
Tq-AUSA, Dist-Latur.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
AUSA Police Station,
Tq-AUSA, Dist-Latur,
- 2) Vikas s/o Ahilappa Jadhav,
Age-51 years, Occu:Service,
R/o-AUSA Police Station,
Tq-AUSA, Dist-Latur.

...RESPONDENTS

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Mr.P.P. More Advocate for Applicant.
Ms.P.V. Diggikar, A.P.P. for Respondent No.1.
None present for Respondent No.2.

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**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE : 4TH OCTOBER, 2017

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Application is filed by the Applicant praying therein to quash and set aside the First Information Report bearing Crime No.264 of 2016 dated 13th October, 2016, registered with AUSA Police Station, Dist-Latur for the offence punishable under Section 188 of the Indian Penal Code, as well as the consequential Charge Sheet bearing No.62 of 2016, pending before J.M.F.C., AUSA.

3. Learned counsel for the Applicant submits that none of the ingredients of the alleged offences get attracted even upon reading the allegations in the First Information Report (for short "FIR") in its entirety. It is submitted that

the offence is registered by the police officer who is not the competent authority to register the offence. The Applicant is a manager of Shivmudra Club. It is submitted that Shivmudra Club is being run as per the rules and regulations. There is no violation of any condition as stipulated in the license, there is no disturbance of the peace in the society. The Applicant is falsely implicated in the alleged offence with ulterior motive. Therefore, he submits that the FIR may be quashed.

4. On the other hand, learned A.P.P. appearing for the State invites our attention to the contents of the FIR and submits that alleged offences are disclosed and pursuant to the said FIR, Charge-sheet bearing No.62 of 2016 is filed before the learned Judicial Magistrate, First Class, AUSA, and therefore the Application deserves to be dismissed.

5. We have heard learned counsel appearing

for the Applicant and learned A.P.P. appearing for the State. Upon careful perusal of the allegations in the FIR, it appears that the informant along with other police staff, went to Shivmudra Club at about 19.10 hours on 13th October, 2016. The Applicant is a manager of said Shivmudra Club. The informant along with his colleagues, entered in the underground hall of the said Club and found that eight persons were playing cards by seating together in circle. The Sub Divisional Police Officer, AUSA, on perusal of the license issued in favour of Shivmudra Club by the District Collector and District Magistrate, noticed that permission to run the said club was granted by the District Magistrate on 9th August, 2016, and as per the conditions stipulated in license, only four persons were permitted to sit across one table for playing cards. However, it was found that eight persons were playing cards in the underground hall of the club and therefore the Applicant has violated the conditions stipulated in the license.

Hence, the Applicant has committed an offence punishable under Section 188 of the I.P. Code.

6. If the allegations in the FIR are examined in the light of the provisions of Section 188 of the I.P. Code, none of the ingredients of the said Section get attracted. To attract the ingredients of Section 188 of I.P. Code upon reading the allegations in the FIR, following four ingredients should get attracted and thereafter only it can be said that an alleged offences have been disclosed under the said Section of the I.P. Code:

- 1) There must be order promulgated by a public servant,
- 2) That, the public servant must have been lawfully empowered to promulgate such order,
- 3) That, a person having a knowledge of such order and directed by such order (a)

to abstain from a certain act, or (b) to take certain order with a certain property in his possession or under his management, has disobeyed such direction,

4) That such disobedience causes or tends to cause (i) obstruction, annoyance or injury, or risk of it, to any person lawfully employed or (ii) danger of human life, health or safety, (iii) a riot or affray.

7. In the first place, in the present case there is no breach of order promulgated by a public servant. Secondly, since such order was not promulgated by any public servant, the question of disobedience of such order would not arise. Even otherwise also the allegations attributed to the Applicant that more than four persons were playing the cards, are taken as it is, it has not caused harm to anybody. In that view of the matter, upon reading the allegations in the FIR in its entirety, an ingredients of Section 188 of the

I.P. Code are not attracted in the facts of the present case. At the most, it can be said that there was breach of the conditions stipulated in the license, and in that respect the authority may initiate appropriate action as is permissible in law.

8. In that view of the matter, the Application succeeds. The the First Information Report bearing Crime No.264 of 2016 dated 13th October, 2016, registered with AUSA Police Station, Dist-Latur for the offence punishable under Section 188 of the Indian Penal Code, as well as consequential Charge Sheet bearing No.62 of 2016, pending before the Judicial Magistrate, First Class, AUSA, are quashed and set aside.

9. Rule made absolute in above terms. The Application stands disposed of, accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]