

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1523 OF 2016

Ashok Mahadeo Sawant : Petitioner.
Versus
The State of Maharashtra and ors. : Respondents.

Mr.S D Inamdar-Shinde i/by Mr. B A Lawate for the Petitioner.
Mrs. M M Deshmukh, Addl. PP for the Respondent/State.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 26th September 2017

P.C.

1 The writ jurisdiction of this Court is invoked for quashing and setting aside the complaint dated 24/12/2015 lodged with the Shivaji Park Police Station, Dadar, the charge sheet No.1570 of 2015 and C.C No.3523/PS/2015 pending before the learned Additional Chief Metropolitan Magistrate, 5th Court Dadar at Mumbai for the offences under Section 33(1)(t) r/w Section 131 of the Maharashtra Police Act (hereinafter referred to as “the said Act”).

2 The Petitioner herein is a tenant of the premises mentioned in the cause title of the above Petition viz. premises bearing No.1/1, Datta Prasad, 274-A, Veer Savarkar Marg, Shivaji Park, Dadar (W), Mumbai 400 028. It appears that the said building is of some vintage and therefore the Petitioner's

premises required some tenantable repairs to be carried out. The tenantable repairs in terms of the Rent Act which were being carried out by the Petitioner were the repairs of kitchen platform, replacement of doors of toilet block, bathroom & bedroom, plastering of walls of toilet block and plastering of the walls as the walls developed cracks, amongst repairs. The Petitioner had accordingly informed the landlord of the building vide his letter dated 23/11/2015 of the repairs he is intending to carry out. The landlord has on the same day made an endorsement on the said letter to the following effect :- “No sliding window work to be done”. Hence the landlord had granted permission save and except to the installation of sliding windows. The Petitioner's tenanted premises are situated on the first floor. It seems that there is bar and restaurant known as Hotel Tamnak Thai on the ground floor below the Petitioner's premises. On 24/12/2015 an employee of the said restaurant one Gopinath Bajirao Jadhav approached the Shivaji Park Police Station, Dadar with a complaint that the Petitioner is carrying out illegal repairs in the common wall of his house and thereby causing nuisance to neighbours and endangering their lives. It seems that at the relevant time when the said employee of the restaurant went to the police station, Police Sub-Inspector Mr. Gavit and his superior Police Officer PI Mr. Hiremath were on duty on the said day. They recorded the complaint of said Jadhav and summoned the Petitioner and asked him to deposit an amount of Rs.12,500/- for which a receipt was issued by the said officers. The Petitioner's protestations as regards the

payment of Rs.12,500/- demanded from him were of no avail as also the representation made by the Petitioner that he was only carrying out the tenantable repairs was not paid any heed to by the Respondent Nos. 5 and 6 Police Officers. It seems without carrying out any inquiry as regards the truth of the allegations, the provisions of Section 33(t) r/w Section 131 of the said Act were invoked against the Petitioner. It seems that the Petitioner also made written representation on 24/12/2015 which representation was also not given any heed to by the Respondent Nos. 5 and 6 - Police Officers. The Respondent Nos.5 and 6 - Police Officers thereafter have filed a charge sheet on 28/12/2015 and it is arising therefrom that the proceedings being C.C. No.3523/PS/2015 are now pending before the Additional Metropolitan Magistrate, 5th Court, Dadar, Mumbai. As indicated above, the instant Writ Petition has been filed for quashing of the said proceedings.

3 On behalf of the Respondent/State an affidavit dated 25/09/2017 has been filed by Gangadhar R Sonawane – Senior Inspector of Police attached to Shivaji Park Police Station, Dadar, Mumbai.

4 Heard the learned counsel for the Petitioner and the learned Additional Public Prosecutor for the Respondent/State.

5 It was the submission of the learned counsel for the Petitioner Shri

S D Shinde that the Petitioner was carrying out only tenantable repairs which are covered by Section 14 of the Maharashtra Rent Control Act, 1999 and therefore no permission of the Municipal Corporation of Greater Mumbai (“MCGM” for short) as per Section 342 of the Mumbai Municipal Corporation Act 1888 was required for carrying out the said repairs. The learned counsel would contend that the action of the police of asking the Petitioner to deposit an amount of Rs.12,500/- as also invoking Section 33(t) was high-handed having regard to the facts and circumstances of the case. The learned counsel would contend that Section 131 of the said Act which provides for penalty is attracted if there is a breach of the rules which have been framed under various sub-sections of Section 33 of the said Act. The learned counsel would adversely comment on the manner in which the Petitioner herein has been treated by the Police Officers.

6 Per contra, the learned Additional Public Prosecutor Mrs. Deshmukh would justify the invocation of the penal provisions having regard to sub-section (v) of Section 131 of the said Act. The learned Additional Public Prosecutor however, was not in position to demonstrate that any rules have been framed under Section 33(t) of the said Act, for Section 131 to be attracted.

7 Having heard the learned counsel for the Petitioner and the

learned Additional Public Prosecutor for the Respondent/State, we have considered the rival contentions. As indicated above, the Petitioner is a tenant of the premises in a building above the premises, wherein a bar and restaurant by name Hotel Tamnak Thai is being conducted. The complaint on the basis of which Section 33(t) has been invoked is admittedly at the behest of an employee of the said restaurant. The complaint as indicated above is to the effect that on account of the repairs being carried out by the Petitioner, the nuisance is being caused to the restaurant which is on the ground floor.

8 At this stage, it would be necessary to advert to Section 33(t) and Section 131 of the said Act. Section 33(t) of the said Act reads thus :-

“33 Power to make rules or regulation of traffic and for presentation of order in public place, etc.

(1) [The Commissioner with respect to any of the matters specified in this sub-section, the District Magistrate with respect to any of the said matters [except those falling under clauses (a), (b), (d), (db), (e), (g), (r), (t) and (u) thereof] and the Superintendent of Police with respect to the matters falling under the clauses aforementioned read with clause (y) to this sub-section], in areas under their respective charges or any part thereof, may make, alter or rescind rules or orders not inconsistent with this Act for-

(a)

(t) guarding against injury to person and property, in the construction, repair and demolition of building, platforms and other structures from which danger may arise to passengers, neighbours or the public;

(u)”

Hence Section 33 is the enabling power with the Commissioner of Police to make rules, except those falling under Clauses (a), (b), (d), (db), (e), (g), (r), (t) and (u) of the said Section 33. In terms of subsection (t) of Section 33 rules can be framed for guarding against injury to person and property in the construction, repair, demolition of buildings, platforms and other structures from which danger may arise to passengers, enighours or the public.

Now coming to Section 131 of the said Act. The said provision reads thus :-

“131. Penalty for contravening rules. etc., under Sec. 33.

3[4[Save as provided in Sec. 131-A, whoever]-

(a) contravenes any rules or order made under Section 33 or any of the conditions of a licence issued under such rule or order, or

(b) abets the commission of any offence under clause (a) shall, on conviction be punished]-

(i) if the rule or order under which the said licence was issued was made under clauses (b), (g), (h), (i), sub-clauses (i) and (ii) of clause (r) or clause (u) of sub-section (1) of Section 33, with imprisonment for a term which may extend to eight days or with fine which may extend to 5[one thousand two hundred fifty rupees] or with both;

6[(ia) if the rule or order which the said licence was issued was made under sub-clause (iii) of clause ®, of sub-section (1)of Section 33, with imprisonment for a

term which may extend to three months or with fine which may extend to two thousand rupees or with both]

(ii) if the rule or order contravened was made under clause 1[(wb) or (x) of sub-section (1)] of Section 33, with imprisonment for a term which may extend to three months or with fine which may extend to 2[twelve thousand five hundred rupees] or with, both;

(iii) if the rule or order contravened or the rule or order under which the said licence was issued was made under clauses (n) and (o) of sub-section (1) of Section 33 with fine which may extend to 3[five thousand rupees]

(iv) if the rule or order contravened was made under clause (b) of sub-section (1) of Section 33 and prohibits the sale or exposure for sale of any goods on any street or portion thereof so as to cause obstruction to traffic or inconvenience to the public-

(a) for the first offence with imprisonment for a term which may extend to one month or with fine which may extend to 4[two thousand five hundred rupees] or with both; and

(b) for a subsequent offence with imprisonment for a term which may extend to six months and with fine which may extend to 5[five thousand rupees]; and

(v) if the rule or order contravened or the rule or order under which the said licence was issued 1[was made under any clause of sub-section (1) of Section 33 and for the contravention of which no penalty is provided under this section], with fine which may extend to five hundred rupees]”

9 A reading of the said provision therefore disclose that the penalty under the said provision is provided for contravention of any rules which have been framed under the various provisions of Section 33 of the said Act. In so

far as the amount of Rs.12,500/- is concerned, if there is contravention of any rule or order was made under clause (wb) or (x) of sub-section (1) of Section 33, the same can be visited with an imprisonment for a term which may extend to three months or with fine which may extend to Rs.12,500/- or with both. Hence only in respect of contravention of rules or order made under clause (wb) or (x) that the punishment to the extent mentioned therein is attracted.

10 It is pertinent to note that in so far as Section 33(t) is concerned, reference to the said provision is conspicuously absent in Section 131 of the said Act. Hence the question that begs an answer is how the amount of Rs.12500/- was recovered from the Petitioner. The said issue would be dealt with a bit later.

11 Hence the statutory provisions as above do not make out a case where the said provisions could have been invoked against the Petitioner viz. Section 33(t) of the said Act as no rules framed under the said provision were brought to our notice during the course of the hearing of the above Writ Petition, of which breach could have been alleged against the Petitioner.

12 It is required to be noted that the Petitioner had also complained to the State Human Rights Commission as regards the manner in which he was treated by the police. Before the Human Rights Commission, the MCGM had

submitted a report dated 30/01/2016. In the said report it is stated by the MCGM that a visit was made to the site in question whereupon the official of the MCGM found that tenantable repairs of the nature enumerated in the said report was being carried out. The said report concludes by observing that the proposed work is of tenantable repairs as such permission of the MCGM authorities is not required subject to the work being carried out as per Section 342 of the MCGM. Significantly though the police were parties to the said proceedings before the Human Rights Commission wherein the report was filed by the MCGM. In the affidavit filed by Shri Gangadhar Sonawane, there is not a whisper about the proceedings which took place before the Human Rights Commission and the report that was filed by the MCGM. In fact in the affidavit, the affiant makes bold to state that the Petitioner had not submitted any document of any permission granted by the MCGM. This stand of the affiant in the teeth of the report of the MCGM cannot be countenanced. This only fortifies the fact that the action in the instant case by the police has been high-handed and not supported by the statutory provisions.

13 Now coming to the amount of Rs.12,500/-. The receipt for the said amount discloses that the said amount is by way of a bond under Section 436 of the Criminal Procedure Code. The occasion for the Petitioner to execute a bond would arise if the offence with which the Petitioner is charged is a bailable offence. We have not been pointed out any provision as to how the

Petitioner was asked to deposit the said amount of Rs.12,500/- save and except the learned Additional Public Prosecutor seeking to rely upon clause (v) of Section 131 of the said Act which in our view was not with any deal of conviction. The said provision in our view is inapplicable as the said provision would be applicable only if there is a contravention of a rule or order under which a license has been issued. In the instant case, no license has been issued to the Petitioner. In our view, therefore, the Respondent Nos.5 and 6 Police Officers have for the reasons best known to them have taken an undue interest of proceeding against the Petitioner by not only registering the complaint but also by filing the charge sheet. The manner in which the Police Officers have conducted themselves is required to be deprecated. This is a case where a person belonging to the middle class is sought to be unnecessarily harassed by the law enforcement agency for reasons not far to seek. We restrain ourselves from making any further comments as regards the conduct of the Police Officers. The upshot of the above discussion would be that the above Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a). Since we have quashed the proceedings the Petitioner would be entitled to the consequences thereof in so far as the bond amount of Rs.5000/- is concerned.

14 We were inclined to impose costs on the Police Officers i.e. the Respondent Nos.5 and 6 to be personally recovered from them, however, after

the instant order was complete, the Respondent Nos.5 and 6 expressed a desire to file affidavits tendering their unconditional apology for whatever has happened. The Respondent Nos. 5 and 6 have accordingly filed affidavits bearing today's date tendering an apology. In view of the said affidavits, we do not deem it appropriate to impose any costs or direct action to be taken against the Respondent Nos.5 and 6. We hope and trust that the Respondent Nos.5 and 6 on account of the instant order are sufficiently chastened and would henceforth take proper care before registering an FIR. The above Writ petition to accordingly stand disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]