

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 669 OF 2017

Tushar Chandrabhan Shelke and ors.	..Applicants
Versus	
The State of Maharashtra (Through Worli Police Station, Mumbai)	..Respondent

Mr. Ajit M. Savagave, advocate for the applicants.
Mr. K. V. Saste, APP for the State.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-
JOSHI, JJ.**
DATE : 14th NOVEMBER, 2017.

P. C. :

Heard Mr. Savagave, learned counsel for the applicants
and Mr. Saste, learned APP for the State.

2. The application is filed for quashing and setting-aside the proceedings of regular criminal case No.1721/PS/2016 pending on the file of the learned Metropolitan Magistrate, 62nd Court at Dadar, Mumbai, qua the applicants. The said case arises out of registration of FIR bearing CR No. 233 of 2014 with Worli Police Station for the offences punishable under Sections 294 and 114 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC") and Section 33-W of the Maharashtra Police Act.

3. There are total 52 accused in the subject FIR. Out of the 52 accused, 25 accused including the applicants are the customers. It is

the case of the prosecution that on 22nd June, 2014, when the complainant/Police Naik- Satyavan Rajaram Ghadigaonkar, was on duty along with his police team at Social Branch, Police Inspector – Ranmale informed them that Assistant Commissioner of Police (Enforcement) received reliable information that bar girls of “Carnival Bar and Restaurant” were performing songs in inadequate clothes and in obscene manner and the owner and conductor of the bar, manager, cashier, staff and customers of the bar were instigating the obscenity. The ACP (Enforcement), therefore, directed to conduct raid on the said Bar and verify the same. As per the directions issued by the ACP (Enforcement), the complainant and his police team along with two panch and two panter raided the “Carnival Bar and Restaurant”. It was found that on the given date and time, accused Nos. 1 to 12 were performing songs in inadequate clothes and in obscene manner and by making indecent gestures they were touching the bodies of customers. The FIR alleged that the owner and conductor of the bar, manager, cashier, staff and customers of the bar were involved in the acts of instigating obscenity. In the light of the facts, the FIR came to be registered for the offences stated above. The FIR also alleged that the owner and conductor of the bar breached the conditions of license and committed the offence under Section 33 W of the Maharashtra Police Act and, therefore, the offence under said Section came to be registered.

After completion of the investigation, charge-sheet also came to be filed before the learned Metropolitan Magistrate, 62nd Court at Dadar, Mumbai, which is numbered as regular criminal case No.1721/PS/2016.

3. The learned counsel for the applicants heavily relied upon a decision of Division Bench of this Court in **Narendra H. Khurna and ors. vs. Commissioner of Police and anr. 2004 ALL MR (Cri) 618** and submitted that so far as the present applicants are concerned, the ingredients of the offence under Section 294 of the IPC are not made out inasmuch as there is no material on record that the act alleged in the FIR caused annoyance to others.

4. Having considered the rival submissions and having gone through the entire charge-sheet, which is annexed to the petition and the decision of the Division Bench in **Narendra H. Khurana and ors. (supra)** cited across the Bar, we find merit in the petition. The Division Bench in **Narendra H. Khurana and ors. (supra)** held that the object and scope of Section 294 of the IPC is intended to prevent an obscene act being performed in public to the annoyance of public at large. The Division Bench further held that essential ingredients of the offence under this section are as follows:

- i) an act must have been done in a public place;
- ii) the said act must be obscene; and

iii) the same must cause annoyance to others.

The Division Bench ultimately concluded that performance of obscene or indecent act is not sufficient for the purpose of offence under Section 294 of the IPC, but there must be further proof to establish that it was to the annoyance to others. Thus, annoyance to others is essential to constitute an offence under Section 294 of the IPC.

6. Even accepting the allegations made against the present applicants in the charge-sheet on its face value, we find that no offence is made out against them under Section 294 of the IPC inasmuch as there is no material on record to show that the alleged obscene act though performed at public place caused annoyance to anybody. Mr. Saste, learned APP, also fairly conceded this position. In the light of the above, the application must succeed. The criminal application is, accordingly, allowed in terms of prayer (b). The proceedings of regular criminal case No.1721/PS/2016 pending on the file of the learned Metropolitan Magistrate, 62nd Court at Dadar, Mumbai, are quashed and set-aside qua the applicants. The criminal application is disposed off.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]