

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

CRIMINAL WRIT PETITION NO.2951 OF 2017

Thainest Co. Pvt. Ltd.

Through its Director

Vishal V Kondhalkar and ors.

: Petitioners.

Versus

Mukund Mahajan and ors.

: Respondents.

Mr. Aditya Barthakur for the Petitioners.

Mr. K V Saste, Addl. PP for the Respondent No.4/State.

Mr. S D Patil for the Respondent No.5.

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE JJ.**

DATE : 21st AUGUST, 2016

PC.

1 The above Writ Petition has been filed for diverse reliefs as can be seen from a reading of paragraph 31 of the Petition. By prayer clause (a) the Petitioners seek a direction to correct unpardonable violation of Article 19(1)(g) and Article 21 of the Constitution of India. By prayer clause (b) the Petitioners seek quashing of FIR bearing No.587 of 2017. By prayer clause (c) a direction is sought that the Respondent No.1 and all the other police officers who acted on his directions be suspended forthwith. By prayer clause (d) the Petitioners seek the relief of directing the Yerawada Police Station, Shastrinagar, Pune to register an FIR under Section 120B r/w Sections, 143, 145, 148, 149, 166, 348, 352,

388, 447 and 506 Part II of the Indian Penal Code against the Respondent No.1 and all officers who acted on his directions. By prayer clause (e) the Petitioners seek a relief directing the Yerawda Police Station, Shastrinagar, Pune to register an FIR under Section 420 r/w Section 120B of the Indian Penal Code against the Respondent Nos.2 and 3. By prayer clause (f) the Petitioners seek a relief of directing the Yerawda Police Station, Shastrinagar, Pune to register an FIR under Section 120B of the Indian Penal Code against the Respondent No.1 and all officers who acted on his directions, and the Respondent Nos.2 and 3. By prayer clause (g) the relief is sought to direct the Yerawda Police Station, Shastrinagar, Pune to register an FIR under Section 109 of the Indian Penal Code against the Respondent No.1. By prayer clause (h) the Petitioners seek grant of compensation to the tune of Rs.Five Crore to the Petitioners on account of fear, mental stress, agony and loss of income experienced as young entrepreneurs.

2 Hence reading of the prayers from (a) to (h) as comprised in paragraph 31 of the Petition shows that most of the prayers are repetitive in nature in the sense that the direction is sought that the FIR be registered against the Respondent No.1 and all officers who acted on his directions and the Respondent Nos.2 and 3.

3 It is required to be noted that an FIR has been registered against the Petitioners by one Sagar Nandkumar Shinde claiming to be the owner of the property in question being commercial premises bearing Unit No.230, Vitoria Premises, Fortaleza Building, Kalyani Nagar, Pune – 411014 admeasuring about 1st floor area 5000 sq.ft. and terrace area 5000 sq.ft. (Approx.) built-up wherein the Petitioners were running a restaturant known as “De Si Re”. It is required to be noted that the Petitioner Nos.2 to 4 are the Directors of the Petitioner No.1 i.e. Thainest Co. Pvt. Ltd. At the relevant time one Mr. Richard Wintle was the director of the Petitioner No.1 along with the Petitioner Nos.2 to 4 above named. A leave and license agreement was entered into by the Petitioner No.1 with the Respondent No.2 herein in respect of the said premises. The said leave and license agreement is dated 27/12/2016. Clause 3 of the said leave and license agreement contains the Schedule as regards the manner in which the license fees were to be paid by the licensee i.e. the Petitioner No.1. It seems that after the said leave and license agreement was entered into, there is some dispute between the director Mr.Richard Wintle and the Petitioner Nos.2 to 4 above-named as evidenced by the allegations which the Petitioners are seeking to make against the said Mr.Richard Wintle as regards the money given to him for procuring the liquor license. It seems that the Schedule in respect of the payment of

license fees was not adhered to by the Petitioner No.1 as it seems that the license fees were paid up to May 2017 as claimed by the Petitioners. The Respondent No.3 has lodged an FIR with the Yerawda Police Station, Shastrinagar, Pune against the Petitioners alleging offences under Section 120B r/w Sections, 143, 145, 148, 149, 166, 348, 352, 388, 447 and 506 Part II of the Indian Penal Code. The subject matter of the FIR was the allegations against the Petitioners in respect of the alleged usurpation of the licensed premises by the Petitioners. It is the allegation of the Petitioners that the Petitioners were called by the Respondent No.1 and were detained in the police station from 3 pm to 8 pm on the said day. It is the further allegation of the Petitioners that the premises are presently under lock and key. The learned Counsel appearing on behalf of the Petitioner Shri Barthakur states that as per the instructions received by him the keys have been returned by the Police to the Respondent No.2 who is the brother of the Respondent No.3.

4 As indicated above between the Petitioners and the Respondent No.2 there is a jural relationship of licensor and licensee and therefore if the Petitioners have to seek any relief in respect of the licensed premises, they have to approach the appropriate Court. In so far as the allegation against the Respondent No.1 and his officers are concerned, it is required to be noted that the said allegation has to be

considered in the context of the fact that the FIR has been registered against the Petitioners by the Respondent No.3 who is the brother of the Respondent No.2. It is the allegation of the Petitioners that the action of detaining the Petitioners from 3 pm to 8 pm was excessive and that the same interferes with the fundamental rights of the Petitioners to carry on business. The action of the premises being locked according to the Petitioners also interferes with the fundamental rights of the Petitioners. In view of the said submissions of the learned Counsel for the Petitioners we queried the learned Counsel for the Petitioners as to whether the Petitioners had made any grievance as regards the manner in which the Respondent No.1 and his subordinates had conducted themselves before the higher police officers i.e. either the Zonal Deputy Commissioner of Police or the Commissioner of Police, Pune. The learned Counsel for the Petitioners informed us that it is not necessary for the Petitioners to do so as the Petitioners have approached this Court against the action of the police which violates the fundamental rights of the Petitioners.

5 In the light of the fact that the FIR has been registered against the Petitioners and in view of the judgment of the Apex Court reported in (2014) 2 SCC 1 in the matter of Lalita Kumari v/s. Government of Uttar Pradesh and others, the police are required to conduct an inquiry, we do not find any illegality in the police conducting

such an inquiry/investigation and in the said process summoning the parties. The reliefs sought by the Petitioners in the above Criminal Writ Petition of suspension of the police officers or claiming compensation, we are afraid, cannot be countenanced by this Court in its writ jurisdiction under Article 226 of the Constitution of India r/w Section 482 of the Criminal Procedure Code in the absence of any credible material. The learned Counsel for the Petitioners sought to place reliance on the judgments of the Apex Court to contend that in respect of the breach of fundamental rights, even if there is an alternate remedy, the Petitioners are entitled to approach this Court. There can be no quarrel with the said proposition. However, in the instant case as indicated above the genesis of the disputes lies in the leave and license agreement entered into between the parties and therefore if the Petitioners are seeking to regain the possession which according to them they are entitled to under the leave and license agreement and are seeking any other injunctive relief, then it is for the Petitioners to approach the appropriate Civil Court. It would also be open for the Petitioners to avail of the remedy by way of making representation under Section 154(3) of the Criminal Procedure Code to the higher police officers as regards the allegation against the Respondent No.1 and the other officers are concerned.

6 In that view of the matter no case for exercise of jurisdiction

under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code is made out. The above Criminal Writ Petition is accordingly dismissed.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]