

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2997 OF 2017

1 Rushikesh Ravindra Aaherwadikar
Age: 24 Years,
Occ: Service,
R/o. Flat No.10, Kudalepatil Paradise,
Pushpak Sweet Lane,
Manikbaug, Pune.

2 Pavan Ashokrao Warle
Age: 24 Years, Occ: Service,
R/o. Walhekarwadi, Akurdi,
Pune.

.....Petitioners

V/s.

The State of Maharashtra
Through Kothrud Police Station,
Pune

.....Respondent

Mr. Samir Kumbhakoni with Mr. Vaibhav Nirdhar, Advocates
for Petitioners.
Mr. V.B.Konde-Deshmukh, APP for Respondent-State.

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

DATE : September 20, 2017.

JUDGMENT : (Per Shri Sandeep K. Shinde, J.)

Rule made returnable forthwith. With the consent
of the learned counsel for the Parties, the matter is taken up

for final hearing forthwith.

2 The Petitioners have challenged the legality, validity and propriety of the FIR No.49 of 2017 dated 4.2.2017 registered under Section 65(e), 68(a) and (b) and 84 of the Maharashtra Prohibition Act and the charge-sheet filed therein. It is nobody's case that the Petitioners were possessing any intoxicant in contravention of the provisions of this Act or of any rules and regulations or order made or of any licence, permit or authorisation granted thereunder. Prosecution has alleged that the Petitioners were found drinking in a "common drinking house" and thereby rendered themselves liable for penalty within the meaning of Section 84 of the said Act. That perusal of the FIR, allegations therein and other material accompanying the FIR, does not disclose cognizable offence in-as-much as penalty under Section 84 of the said Act is a fine to the extent of 5,000/- Rupees. In view of this fact, the FIR does not disclose cognizable offence justifying investigation by the Police under Section 156(1) of the Code. More so, it appears that the allegations made in the FIR even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out the case against the Petitioners/Accused. We say so because the only allegation made against the Petitioners was that they were found drinking in a

common drinking house. Admittedly, along with the charge-sheet, the prosecution has not placed on record blood test report of the Petitioners to establish that they had consumed liquor in the common drinking house. The only material against the Petitioners brought on record is the statement of the Investigating Officer who had raided the "Common Drinking House" that, the Petitioners were smelling alcohol. In the given set of facts and upon perusing the material on record, we are of the opinion that neither the FIR nor other material accompanying it discloses any offence much less the cognizable offence against the Petitioners. It cannot be ignored that the Petitioners had been to the restaurant for having food, which was raided by the Respondents. The Prosecution has not brought on record any evidence to show that it was within the knowledge of the Petitioners that the premises, i.e, 'Hotel on the Rocks' was "Common Drinking House" within the meaning of Section 2(7) of the Maharashtra Police Act. That unless prosecution discharges primary burden as aforesaid, presumption under Section 84 of the Act will not be of any assistance to prove the charge under Section 84 of the Act. Besides, prosecution has not subjected the Petitioners to medical test and, therefore, there is no evidence on record to prima-facie establish that they had consumed liquor in the common drinking house which allegedly was not possessing licence/permit to sell the liquor.

3 In view of the aforesaid facts, the Petition is allowed and the Crime No.49 of 2007 registered with the Kothrud Police Station, Pune and the charge-sheet filed therein as against the Petitioners is hereby quashed and set aside. The Petition is, accordingly, made absolute in terms of prayer clauses (b) and (b-i).

(SANDEEP K. SHINDE, J)

(R.M.SAVANT, J)