

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 378/2017

(NAGPUR FERIWALA FOOT-PATH DUKANDAR SANGHATNA & OTHERS **VERSUS** THE STATE OF
 MAHARASHTRA & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri M.G. Bhangde, Senior Counsel with Shri R.M. Bhangde for the
 petitioners.

Shri S.S. Doifode, A.P.P. for the R-1 to 3.

Shri J.B. Kasat, counsel for the R-4.

Shri A.S. Kilor, counsel for the applicants in APPW No.142/2017.

Shri H.R. Gadhia, counsel for the Intervenor Nos.1 to 6.

CORAM : SMT. VASANTI A NAIK AND
M.G. GIRATKAR, JJ.

DATE : SEPTEMBER 15, 2017.

By this criminal writ petition, the petitioners have sought the quashing and setting aside of the first information reports registered against the members of the petitioner no.1- Association for the offences punishable under Section 283 of the Penal Code and Sections 102 and 117 of the Maharashtra Police Act. The petitioners also seek a declaration that the action of the police inspector, Sitabuldi police station, Nagpur and his subordinates and the other officials of the Nagpur Municipal Corporation in seizing/removing the goods and articles of the members of the petitioner no.1-Association including the petitioner nos.2 to 16 who are also the members of the association, is violative of the provisions of Article 19(1)(g) of the Constitution of India. Certain other ancillary prayers are also made in the petition.

The petitioner no.1 is an Association of Hawkers and the petitioner nos.2 to 16 are some of the members of the

petitioner no.1-Association. According to the petitioners though they fall within the definition of the term street-vendors under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and though they are entitled to engage in vending of the articles in a street, lane, sidewalk, footpath, etc., the respondent no.3 has wrongfully registered the first information reports against the members of the petitioner no.1-Association and the other petitioners under Section 283 of the Penal Code and Sections 102 and 117 of the Maharashtra Police Act. It is stated by the petitioners by referring to the photographs annexed to the writ petition that the members of the petitioner-Association and the other petitioners are not in any way causing obstruction to any person in the public way, i.e. the Sitibuldi main road, where they are engaged as hawkers. Since the first information reports are registered against the members of the petitioner no.1-Association and the other individual petitioners, they have filed this criminal writ petition for quashing and setting aside the first information reports.

Shri Bhangde, the learned Senior Counsel appearing for the petitioners, submitted that the offence could not have been registered against the members of the petitioner no.1-Association under Section 283 of the Penal Code as for attracting the said provisions, it would be necessary to mention the name of a particular person or persons to whom danger, obstruction or injury is caused in the public way, in the first information report. It is submitted that it would be necessary before registering the offence punishable under Section 283 of the Penal Code to mention the name of the particular person to whom obstruction,

danger or injury is caused. It is submitted that the provisions of Section 102 of the Maharashtra Police Act could not have been invoked as the ingredients of the said provisions cannot be *prima-facie* made out even if the allegations in the first information report are accepted at their face value. It is submitted that the members of the petitioner no.1-Association have not caused obstruction by allowing any animal or vehicle to remain on the public road. It is submitted that if the members of the petitioner no.1-Association had also not halted their vehicles, cattle or had not left any box, bale, package or any other thing on street where they are carrying their vending business, the first information report could not have been lodged against them. It is submitted that during the pendency of this criminal writ petition, by an interim order, a red line was sought to be drawn at a distance of five feet from the yellow strip near the footpath and the hawkers were supposed to vend within the red strip so that they should not cause any obstruction to the traffic or persons. It is submitted that after the said order was passed, the members of the petitioner no.1-Association are carrying on their business within the red strip drawn on the Sitabuldi main road. It is submitted that in view of the judgment of the Hon'ble Supreme Court reported in **2014(1) SCC 490** (*Maharashtra Ekta Hawkers Union & Another Versus Municipal Corporation, Greater Mumbai & Others*), the Hon'ble Supreme Court had permitted all the existing street vendors/ hawkers operating across the country to operate as earlier, till the registration of the hawking zones is completed in terms of the 2009 policy. It is stated that it is further observed in the said decision that once the exercise is completed, the

vendors/hawkers would be entitled to operate only in accordance with the orders/directions of the concerned Town Vending Committee. It is submitted that the Town Vending Committee was, however, not constituted in accordance with law. It is stated that after the Town Vending Committee was constituted, certain shop-keepers had challenged the constitution of the Town Vending Committee and the decisions taken by the said committee in Writ Petition No.6215 of 2016. It is stated that in view of the order of status quo granted by this Court in the said writ petition, the hawkers/vendors are permitted to operate at the places where they were operating as per their registration. It is submitted that in Writ Petition No.3681 of 2016, by an order dated 07.03.2016, the police authorities were permitted to take action against the erring hawkers-vendors. But after a review was sought against the said order, the parties were again directed to maintain *status quo*. It is submitted by making a reference to the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, and specially Sections 27 and 33 thereof, that which a view to protect the street-vendors, the authorities like the police are prevented from restraining the vendors from exercising their rights under the Act. It is submitted that the Section 33 of the said Act would have an overriding effect over anything inconsistent in any other law for the time being in force. It is submitted that since the provisions of Section 33 contain a *non-obstante* clause, the provisions of the said enactment would have an overriding effect over the provisions of the Penal Code, with the result, the offence cannot be registered against the members of the petitioner no.1-Association under

Section 283 of the Penal Code or Section 102 and 117 of the Maharashtra Police Act. The learned counsel relied on the judgment reported in **1977 Cri.L.J. 1040** (*The State of Maharashtra Versus D.R. Chatterjee*) to substantiate his submission that the provisions of Section 102 of the Maharashtra Police Act cannot be attracted unless it is pointed out as to how the accused had caused obstruction. Reliance was also placed on the judgment of the Calcutta High Court reported in **(1893) ILR 20 Cal 665** (*Jugal Das Dalal Versus Queen-Empress*) to submit that the provisions of Section 283 cannot be attracted unless there is evidence to show that the accused had caused danger, obstruction or injury to a particular person in the public way. The learned Senior Counsel also relied on the judgment of the Hon'ble Supreme Court reported in **(1980) 2 SCC 175** (*Raj Kapoor Versus Laxman*) to submit that where a special statute permits the doing of a thing or commission of an act, then in view of Section 79 of the Penal Code, the commission of the said act or a thing would not be an offence. The first information report is sought to be quashed in the aforesaid background.

Shri Doifode, the learned Additional Public Prosecutor appearing for the respondent nos.1 to 3, submitted by referring to the photographs that are annexed to the affidavit-in-reply that it is apparent that the members of the petitioner no.1-Association are causing, danger and obstruction to the entire traffic on the Sitabuldi main road. It is submitted that though this Court had, by an interim arrangement permitted the members of the petitioner no.1-Association to operate or vend within the red line which

demarcates the portion within which they could operate as hawkers-vendors, they have breached the said order, inasmuch as, certain stalls are erected beyond the line of demarcation and some stalls are literally stationed in the midst of the Sitabuldi main road. It is stated by referring to the provisions of Section 102 of the Maharashtra Police Act that if a person leaves any box, bale, package or any other thing whatsoever in or upon a street for an unreasonable length of time or causes obstruction in the street in any way whatsoever, would be liable for the penalty as provided under Section 117 of the Act which could be imposition of fine to the extent of Rs.1,200/-. It is submitted that a copy of only one first information report is annexed to the amendment application though the first information reports are registered against as many as forty vendors-hawkers. It is submitted that without annexing the copies of the first information reports registered against the members of the petitioner no.1- Association and the other individual petitioners, they are sought to be quashed and set aside. It is submitted that it is alleged in the first information report that the stalls-shops of the petitioners are placed on the road and this has caused obstruction to the traffic in the public way, i.e. the Sitabuldi main road. It is submitted that when it is clearly alleged in the first information report that the particular act on the part of the each of the hawkers that is specified in each of the first information reports is causing obstruction to the traffic, it would mean that it is causing obstruction to persons that are a part of the traffic. It is submitted that the petitioners can as well raise their defence in the criminal proceedings, if at all they are initiated against the petitioners but the petitioners

cannot seek the quashing of the first information reports in the circumstances of the case with a view to prevent further investigation in the matter.

Shri Kasat, the learned counsel for the Nagpur Municipal Corporation, opposed the prayers made in the writ petition. It is submitted that since it is time and again found that the members of the petitioner no.1-Association and the other hawkers are conducting their business by using temporary structures on the road, thereby causing obstruction to the free flow of traffic, the corporation is required to take action against the erring hawkers. It is stated that the action on the part of the police authorities as well as the Nagpur Municipal Corporation is justified.

Shri Kilor, the learned counsel for the Sitabuldi Merchants' Association and Shri Gadhia, the learned counsel for the Sitabuldi Residents Association, submitted that the prayers made by the petitioners may not be granted as the petitioners are causing a great nuisance to the members of the merchants' association and the members of the residents association. It is submitted that some times the residents are not in a position to even access their houses and the customers of the merchants' who have their permanent shops on the main road, are not in a position to freely access the shops. It is submitted that in the circumstances of the case, the writ petition is liable to be dismissed.

The relief sought by the petitioners cannot be granted for more reasons than one. We find on a reading of the petition that though the petition is filed by the petitioner no.1-Association of hawkers and the other individual hawkers seeking the quashing and setting aside of the first information

reports that are registered against the members of the petitioner no.1-Association and the other petitioners, the first information reports are not annexed to the writ petition except the first information report pertaining to the petitioner no.3. The petitioner no.1-Association could not have in the representative capacity sought for the quashing and setting aside of the first information reports lodged against its members. It was necessary for each of the members of the petitioner no.1-Association to file separate writ petitions to seek an appropriate relief. Though there are more than 156 members of the petitioner no.1-Association, the petition is filed only by fifteen individual members and the first information reports registered against fourteen such individual petitioners are not annexed to the petition except the first information report registered against the petitioner no.3. The petitioner no.1-Association could not have sought the quashing and setting aside of the first information reports against its members when the first information reports were registered separately against its members. It is stated on behalf of the respondents that the first information reports are registered against as many as forty hawkers. In the absence of the first information reports, it would not be possible for this Court to quash the same. Every individual hawker-vendor would normally be required to file a separate petition seeking the quashing and setting aside of the first information report registered against him. If the first information report registered against each of them is identical and if a common petition is filed, still it would be necessary to annex to the petition, the first information reports registered against each of the petitioners. In the aforesaid set of facts, we are not

inclined to quash and set aside the first information reports registered against the members of the petitioner no.1- Association when the petition is not properly presented and we could not have perused the first information reports, as they are not filed.

It would now be necessary to consider whether an offence under section 283 of the Penal Code and Sections 102 and 117 of the Maharashtra Police Act could be *prima-facie* made out on the basis of the allegations in the first information report pertaining to the petitioner no.3, if they are accepted at their face value. It is alleged in the first information report registered against the petitioner no.3 that is annexed to the petition that the temporary stall of the petitioner no.3 is placed on the Sitabuldi main road and it is causing obstruction to the traffic on the main road. We do not find any merit in the submission made on behalf of the petitioners that it would be necessary while registering an offence under Section 283 of the Act to mention to which particular person or persons, the obstruction is caused. It would not be necessary to mention in the first information report that the obstruction was caused to A, B, C or D by naming them and giving their particulars. The definition of the word 'person' in the Penal Code is wide and inclusive. The allegation is that there is obstruction to the traffic. Traffic would include the 'persons' traveling in/on four wheelers, two wheelers, cycle-rickshaws or even 'persons' walking on foot, i.e. pedestrians. The traffic would essentially involve a person. There cannot be traffic on the road without person or persons. It would not be necessary in a given case to mention the names of each of the individuals that are

traveling on a public street or a way of navigation while registering an offence against the accused for causing obstruction, danger or injury to the person. Even if the names of the persons to whom the obstruction is caused are not specifically mentioned in the first information report, still an offence could be registered against the accused, in a given case. On a reading of the provisions of Section 102 of the Maharashtra Police Act, it also cannot be *prima-facie* said that the first information report could not have been registered against the hawkers under the said provision, even though it is alleged that they had kept their hawking stalls on the road and that obstructed the traffic. Though certain rights may have been granted to the vendors-hawkers as per the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, it would not mean that the street-vendors would be entitled to carry on their business on the length and breadth of a public road or a public place. The Act clearly provides for a vending zone. Though all the provisions of the Act are not implemented, it would not mean that the hawkers or vendors would be entitled to carry on their business on every part of the public street. If the vendors-hawkers carry on their business on the public street in such a way that it would cause obstruction, danger or injury to the person or persons, certainly action could be taken against them. Since the Hon'ble Supreme Court has directed that the vendors-hawkers would be entitled to carry on their business on public streets or the places where they were doing so till the provisions of the Act are implemented, it would be for the hawkers-vendors to carry on the business in such a manner that it would not

cause danger, obstruction or injury to a person. We find from the photographs that are annexed along with the affidavit-in-reply filed on behalf of the respondent nos.1 to 4 on record that several hawking and vending stalls are placed on such areas or places on the main road, which would surely cause obstruction to the traffic. Even though this Court had directed by the interim order that the hawkers-vendors could carry on their business within the red line of demarcation, we clearly find from the photographs that are annexed to the affidavit-in-reply of the respondents that the hawkers-vendors have crossed the said line and in some photographs, the entire stall is placed beyond the red line on the side meant for the traffic, thereby affecting the free flow of traffic. The material which the respondent no.3 has collected during the pendency of the writ petition, clearly shows that the first information report cannot be quashed and set aside and it would be necessary for the individual petitioners to raise their defence in the trial Court, if at all it is necessary to launch proceedings against the members of the petitioner no.1-Association. Since this writ petition does not seek the only relief of quashing and setting aside of the first information reports and some other general prayers are also made therein, at the request of the learned counsel for the petitioners, we make it clear that none of the respondents-authorities should take any action against genuine hawkers-vendors that are carrying on their business without obstructing the free flow of traffic. In the circumstances of the case, since each of the petitioners have not filed the copy of the first information reports that are registered against them and since it cannot be said on the reading of the first information report pertaining

to the petitioner no.3 at its face value that *prima-facie* an offence under Section 283 of the Penal Code and Sections 102 and 117 of the Maharashtra Police Act cannot be made out against the petitioner no.3, the writ petition is liable to be dismissed.

In the result, the criminal writ petition is dismissed with no order as to costs.

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