

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.401 of 2017
(Dhanraj s/o. Shalikram Sarve .vs. State and Ors.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.R.M.Pande, Advocate for the petitioner.
Ms Tajwar Khan, A.P.P. for the Respondent Nos. 1 to 4.

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

DATE : 6.9.2017.

By this Criminal Writ Petition, the petitioner seeks a direction against the Police Station, Bhandara to lodge the First Information Report against the respondent nos. 5 to 17 for the offences punishable under Sections 166, 379, 409, 417, 447 and 448 of the Penal Code.

It is the case of the applicant that one Rajesh was the owner of 'Shreyas Bar and Restaurant' and he also possessed a FL-III license. The Bar and Restaurant and the liquor license were given by Rajesh to the applicant on rent for 75 months. According to the applicant, before the said term expired, Rajesh died and the legal heirs of Rajesh did not renew the license in favour of the applicant and informed the Excise Department that the Bar and Restaurant and the liquor license be closed. On the application of the legal heirs of Rajesh, the shop, the Bar and Restaurant and the liquor license of the applicant were discontinued, with the result that the applicant was not able

to run the Bar and Restaurant and operate the liquor license since then. In view of the order of closure, the Bar and Restaurant were sealed by the Officers of the Excise Department, who are also joined as party-non-applicants. It is the case of the applicant that the stock of the foreign liquor to the extent of Rs.27 Lakhs and the furniture and other items worth Rs. 5 Lakhs belonging to the applicant were lying in the Bar and Restaurant. It is the case of the applicant that when the applicant had invoked Arbitration Clause and had filed some proceedings before the High Court for seeking appropriate orders, the legal heirs of Rajesh and the Officers of the Excise Department together came to the Bar and Restaurant, opened the seal and the stock of foreign liquor that belonged to the applicant was removed. It is the case of the applicant that though when the Bar and Restaurant was sealed, the stock of foreign liquor worth Rs.27 Lakhs was lying in the shop, when the stock was recovered after unsealing the lock, only the stock of Rs.2 Lakhs was to be found. In this background, the applicant has sought registration of the F.I.R. against the non-applicant nos. 5 to 17.

In the circumstances of the case, as narrated hereinabove, we are not inclined to direct the non-applicant no.1 to register the F.I.R. against the non-applicant nos. 5 to 17. As rightly stated on behalf of the non-applicant nos. 1 to 4, the dispute between the applicant and the non-applicant nos. 5 and 6 is a civil dispute and the applicant had rightly sought to invoke the Arbitration Clause in respect of the dispute pertaining to the lease of the Bar and Restaurant and the FL-III License. If it is the case of the

applicant that the stock lying in the Bar and Restaurant belonged to him and the stock of foreign liquor worth Rs.27 Lakhs was lying in the Bar and Restaurant, it would be for the applicant to avail the appropriate remedy, if so advised. In the circumstances of the case, a direction cannot be issued against the non-applicant nos. 1 to 4 to register the F.I.R. against the non-applicant nos. 5 to 17.

Since the relief sought by the petitioner cannot be granted, we dispose of the Criminal Writ Petition with no order as to costs.

JUDGE

JUDGE

**jaiswal*