

Vidya Amin.

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

CRIMINAL WRIT PETITION NO. 2981 OF 2016

Mrs. Anjali Rajanish Nirmal	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

Mr. Manoj M. Gadkari, Advocate for the petitioner.
Ms. Pallavi Dabholkar, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 19th November, 2018**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the judgment and order dated 5th August, 2015 passed by the learned Additional Sessions Judge, Pune in Criminal Revision Application No. 24 of 2015.

3. The petitioner is prosecuted for the offences punishable under section 65(E), 81, 82 and 83 of Bombay Prohibition Act, 1942 along with sections 33(w) and 131(5) of the Bombay Police Act, 1951 passed by the learned Judicial Magistrate First Class, 36th Court, Pune in Regular Criminal Case No. 1487 of 2013. The

petitioner moved an Application for discharge from Regular Criminal Case No. 1487 of 2013, which is marked Exhibit 50. The said Application for discharge was rejected by order dated 8th November, 2014 by the learned 36th Judicial Magistrate First Class, Pune and against which Revision Application No. 24 of 2015 was filed by the petitioner. The said Revision Application was dismissed. Hence, this Petition.

4. The facts of the case, in brief, are as follows:

The petitioner is the owner of the premises at Village Wagholi, Pune where Hotel Maya is run by Red Entertainment Service and accused nos. 1 to 4 are the Directors of the said company. The petitioner is made accused no. 7 in the case. On the night intervening 1st and 2nd September, 2012, the police raided the Hotel premises and they found that approximately 300 boys and girls were found shouting and dancing in drunken condition. The music was played on Disk Jockey . As per the case of the prosecution, though permit was given to sell the liquor in the name of one of the Directors of Red Entertainment Services, i.e., accused no. 2, but it was only upto 11 p.m. The raid was conducted at night at around 12 O'Clock and therefore, there was

breach of the licence condition and so the offences under the relevant provisions of Bombay Prohibition Act, 1942 and Bombay Police Act, 1951 were registered.

5. The learned counsel for the petitioner submitted that the petitioner admits the fact that she is the owner of the premises. The petitioner also admits that she has entered into Agreement of Leave and Licence with Red Entertainment & Services for a period from 1st November, 2011 till 30th September, 2016. The learned counsel pointed out the said Leave and Licence Agreement wherein in clause no. 8.1 a condition was specifically mentioned which states -

“The Licensee shall manage the Pub as per the provisions of law and should not commit breach of any of the rules and regulations applicable to such Pubs and shall also follow all the terms and conditions in respect of the licenses obtained for running the same”.

The learned counsel submitted that immediately after raid, the petitioner/accused no. 7 has terminated the contract with Red Entertainment & Services and the said property is sold to some other person. He submitted that the petitioner is no way concerned with the breach of the terms of contract of license. The

order passed by the learned Judicial Magistrate First Class, Pune and the learned Additional Sessions Judge, Pune are not legal and hence, the orders are to be set aside.

6. Learned APP while defending the order passed by the learned Additional Sessions Judge and learned Judicial Magistrate First Clas, Pune has submitted that the petitioner, being the owner of the premises, is supposed to have knowledge of the activities which are going on in the premises. She submitted that during the raid, the police have noticed a clear breach of the terms and conditions of the license and hence, the FIR is lodged against the Directors of the Red Entertainment and Services and also against petitioner/accused no. 7.

7. Perused the orders passed by the learned Judicial Magistrate First Class, Pune and learned Additional Sessions Judge, Pune. The learned Judicial Magistrate First Class in paragraph 15 of the order has held that the applicant-accused no. 7 had indirect participation and therefore, the accused no. 7 cannot be discharged. The learned Additional Sessions Judge, in paragraph 8 of the order, has considered the law governing Leave

and License Agreement and has stated that the licensor remains in actual possession of the premises and no right of any kind whatsoever, in the immovable property is transferred in favour of the licensee. This observation and the view taken by both the Judges may be useful in the civil cases to impose tortious liability. However, in the criminal law, it is essential for the prosecution to verify what offence is committed by the accused. In the present case, no material is placed before me to arrive at a conclusion that the petitioner/accused was responsible for breach of the conditions of the permit to run the Pub and sell liquor. The record reveals that the accused nos. 1 to 4, who are licensee and actually running the pub were de-facto in possession of the suit premises and were having control over that premises on that night. I do not find any indirect participation in the offence by the petitioner. On perusal of the record before the Court and especially on going through the terms of the Agreement, I am of the view that there is no material against the petitioner to frame charge for the offences for which she is prosecuted. It is the case of discharge, hence the Application for discharge is allowed. The orders of the learned Judicial Magistrate First Class and learned Additional Sessions Court are set aside.

7. Rule is made absolute on above terms.
8. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)