

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

CRIMINAL WRIT PETITION NO.2719 OF 2019

Ali Reza Abdi

..Petitioner

V/s.

The State of Maharashtra & Ors.

.. Respondents

Dr.Sujay Kantawala, Mr.Sajal Yadav, Mr.S.K. Saxena i/b Karan Vyas
for the Petitioner.

Mr.S.U. Kamdar, Senior Advocate a/w Mr.Deepak Thakare, PP a/w
Mr.S.R.Shinde, APP for the Respondent Nos.1 and 3-State.

Mr.Ganesh Gole a/w Mr.Kunal Waghmare for Respondent No.2-
MCGM.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 15th JULY 2019

P.C.

1. Heard Mr.Kantawala, learned counsel for the petitioner,
Mr.Kamdar, learned Senior Counsel for respondent Nos.1 and 3 and
Mr.Gole, learned counsel for the respondent No.2-Corporation.

2. The petition is filed under Article 226 of the
Constitution of India seeking following reliefs :-

*“(a) That this Hon'ble Court may be pleased to
examine the legislation and its non-application to*

tobacco free products and issue necessary directions to the effect that no coercive action of any nature ought to be initiated if a hookah is served without tobacco;

(b) In the alternative, this Hon'ble Court may be pleased to; direct that Respondents cannot take any coercive steps against the Petitioner for serving herbal tobacco free hookah unless there are conclusive scientific findings that tobacco is present in the hookah served by the petitioner.

3. The petitioner is running a business of food and beverages since last 20 years and has commenced the concept of Sky-lounge and Sheesha Restaurants. It is the claim of the petitioner that he serves tobacco free hookahs in his restaurants and for that purpose he used product by brand name "Soex".

4. It is specific case of the petitioner that the product "Soex" does not contain tobacco or nicotine. In order to demonstrate so, he relies upon the following reports :-

(i) Report of the Director of Forensic Science, Gujarat State.

(ii) Report of Bombay Forensic (India's Forensic Laboratories)

(iii) Helik Advisory Limited (Private Analysts).

5. The petitioner also relied upon the decision of the learned Single Judge of the Gujarat High Court dated 26.12.2018 in Criminal Miscellaneous Application No.17856 of 2018.

6. It is true that all these reports referred above are in favour of the petitioner in as much as it certifies that the product “Soex” does not contain tobacco, nicotine, narcotic or any psychotropic substance. It is the case of the petitioner made out in ground-G at the Page-11 of the Petition, that he was categorically informed not to sell hookah as same is prohibited under the 2018 Amendment to the Cigarettes and Other Tobacco Products Act, 2003 (COTPA Act). The petitioner has therefore approached this Court under apprehension and sought the relief referred herein above.

7. The petition was placed for admission on 08.07.2019. After hearing the parties we directed Mr.Thakare, learned PP and Mr.Gole learned counsel for the Municipal Corporation to verify and test the product “Soex”. Mr.Kamdar, learned Senior Counsel for the

respondent Nos.1 and 3 and Mr.Gole, learned counsel for respondent No.2 submitted that they have already sent the said product “Soex” for verification to Bombay Forensic (India's Forensic Laboratories, Kalina), however, report is awaited.

8. Mr.Kamdar, submits that the petition is premature as much as the Petitioner is not prohibited at this stage from running a business of restaurant or serving hookah which according to Petitioner do not contain tobacco or nicotine. Mr.Kamdar, learned Senior Counsel makes categorical statement that State is duty bound to implement of the prohibition under the Amendment to “COTPA” Act and except what is prohibited under 2018 Amendment Act, nothing would be prohibited. Statement is accepted.

9. Mr.Gole, learned counsel for Respondent No.2- Municipal Corporation place on record the communication dated 10.01.2018 issued by the Municipal Commissioner of the Bombay Municipal Corporation to the Additional Chief Secretary (HOME). This communication is of Municipal Commissioner's response to the Additional Chief Secretary in pursuant of the letter from Commissioner of Police regarding Hookha Parlours in Mumbai City. The Municipal Commissioner made his stand clear by stating that

hookha Parlours do not fall under the ambit of eating house and therefore do not fall within the provision of Section 394 of the Mumbai Municipal Corporation Act under notified trades for license. In short, the contention of the Municipal Commissioner is that under MMC Act no license is required for the hookha bar. However, the Police Officers are empowered to take legal action for the infringement of the conditions imposed under COTPA Act as well as taking action on the hookha Parlours where drugs/narcotics are provided and consumed which falls under the purview of Police Department.

10. In the light of the above it is clear that the petition is filed on a mere apprehension and as long as the petitioner complies with the provisions of COTPA and do not serve any prohibited substance in the hookha Parlour then no action can be taken against them. However, it is made clear that if it is found the petitioner is selling/using any substance prohibited under the COTPA Act then surely the action can be taken against him. We find that at this stage no declaration more than what is stated above is necessary.

11. Subject to above we dispose of the petition.

12. Needless to state that in case any infraction of the provisions of the COTPA Act as amended in the year 2018 Police Authorities are empowered to take action against the petitioner for using the prohibited substance.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)