

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

CRIMINAL WRIT PETITION NO.78/2019

M/s Chill N Grill Restro & Lounge, Amravati Road, Nagpur

..Vs..

The State of Maharashtra, through the Department of Law and Judiciary,
 Mantralaya, Mumbai and others

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

Court's or Judge's orders

 Shri S.V. Sirpurkar, Advocate for the petitioner.
 Shri T.A. Mirza, A.P.P. for respondent Nos.1 and 2.

CORAM : Z.A. HAQ AND VINAY JOSHI, JJ.

DATED : 25.3.2019.

The petitioner has prayed for declaration that the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Maharashtra Amendment) Act, 2018 (Maharashtra Act LX of 2018) is unconstitutional, arbitrary, unreasonable and violative of Articles 14, 19(1)(g), 19(6) and 21 of the Constitution of India. The petitioner has prayed that Maharashtra Act No.LX of 2018 be struck down / quashed.

At the outset, we expressed that looking to the relief sought by the petitioner writ petition will have to be registered as civil writ petition. Shri S.V. Sirpurkar, learned Advocate for the petitioner, relying on the judgment given by Division Bench of this Court in the case of *M/s. Nagpur Cable Operators' Association V/s. Commissioner of Police, Nagpur and another* reported in

AIR 1996 Bombay 180 submitted that as the Maharashtra Act No.LX of 2018 provides for fine, penalty and imprisonment, the challenge to the *vires* of Act will have to be considered in criminal writ petition.

We are not convinced with the submission made by the learned Advocate for the petitioner. In the judgment given in the case of *M/s. Nagpur Cable Operators' Association V/s. Commissioner of Police, Nagpur* and another (cited *supra*), the Division Bench has laid down that in addition to petition / application under Article 226 of the Constitution of India seeking writ of habeas corpus arising out of unlawful detention, petitions arising out of orders and the matters relating to prevention or breach of peace or maintenance of peace and order or such orders aimed at preventive vagrancy contemplated to be passed, should also be registered as “criminal writ petition”. This Court laid down that “criminal writ petition” will also take in its embrace the petition / application under Articles 226 or 227 of the Constitution of India if it arises out of or relates to investigation, enquiry or trial of the offences either under special or general Statute. With emphasis on the above categories of writ petitions, it is explained that when a Statute commands or prohibits an act, disobedience of such statute is *prima facie* criminal unless criminal proceedings are excluded by such statute and the petition / application under Articles 226 and 227 of the Constitution of India in connection thereto or arising therefrom would be criminal proceeding and should be

styled as “criminal writ petition”.

By no stretch, it can be said that the challenge to the Act i.e. Maharashtra Act No.LX of 2018 has to be examined in criminal writ petition.

Hence we direct the Registry to register the writ petition as civil writ petition and place it before appropriate Bench.

JUDGE

JUDGE

Tambaskar.