

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

CRIMINAL WRIT PETITION NO. 755 OF 2019

Nikhil S/o Suhas Naik .VS.. The State of Maharashtra 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 N.A. Lalwani, Adv. for the petitioner
Mrs. S.S. Jachak, A.P.P. for respondent Nos. 1 and 3/ State.

CORAM : Z.A. HAQ AND
PUSHPA V. GANEDIWALA, J.

DATED : 18th SEPTEMBER, 2019

Heard.

The petitioner who claims that he is engaged in business of running restaurant has filed this petition for the reliefs in the following terms :

“i) 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;

ii) In the alternative, this Honourable Court may be pleased to direct that the 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.”

According to the petitioner, he is not serving any prohibited tobacco product in the hookah, however, the constant threats of action by the respondents is resulting in loss of business and reputation to the establishment of the petitioner. It is submitted that similar issue is dealt with at Bombay in Criminal Writ Petition No. 2719/2019 (Ali Reza Abdi Vs. The State of Maharashtra and others) which is decided by order dated 15/07/2019. Paragraph No. 10 of the order passed in Criminal Writ Petition No. 2719/2019 at Bombay is relied upon. It reads as follows :

“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 hookah 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.”

After considering the grievance of the petitioner and the order passed in Criminal Writ Petition No. 2719/2019 (Ali Reza Abdi Vs. The State of Maharashtra and others), we are of the view that the reliefs sought by the petitioner in this petition cannot be granted. The respondent Nos. 2 and 3, who are the competent authorities cannot be prohibited by a blanket order from taking any action in case of non-service of any prohibited tobacco product in the hookah. There cannot

be a presumption against the statutory authorities that they will act high handedly or in contravention of law. The order passed in Criminal Writ Petition No. 2719/2019 does not support the petitioner.

Reliance is also placed on the order passed by the Division Bench at Principal Seat in Criminal Writ Petition No. 3978/2019 (Munib Birya and others Vs. The State of Maharashtra and others) on 22/08/2019, specially paragraph No. 8 which reads as follows :

“8. In other words as long the petitioners comply with the provisions of COTPA and do not serve any prohibited substance in the hookah parlour then no action can be taken against them. However, it is made clear that if it is found that the petitioners are selling/using any substance prohibited under the COTPA then surely an action can be taken against them. We find that at this stage no direction more than what is stated above is necessary.”

Again in our view, this order does not support the petitioner in as much as a general declaratory order in conformity with the prayers made in the petition in the present case cannot be issued.

Hence, the criminal writ petition is dismissed. No costs.

JUDGE

JUDGE