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Uday S. Jagtap

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

CRIMINAL WRIT PETITION NO. 354 OF 2022

1. Apoorv Ashik Khare

2. Rajkrishna Premratan Sankhla

.. Petitioners

Vs.

The State of Maharashtra

.. Respondent

.....

Mr. Kalpesh U. Patil for the petitioners

Mr. S.S. Hulke, APP for the respondent - State

.....

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 16th DECEMBER, 2022.

ORDER :- (Per Prithviraj K. Chavan, J.)

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal. Mr. Hulke, learned APP waives service on behalf of respondent No. 1- State.

3. By this petition, preferred under Section 482 of the Code of Criminal Procedure, 1973, the petitioners seek quashing of the FIR bearing C.R. No. 49 of 2017 dated 04.02.2017 registered with the Kothrud Police Station, Pune and consequent proceeding in Summary Criminal Case No.240007 of 2017, pending before JMFC, Pune for the alleged offences punishable under Sections 65(e), 68(a) and (b) and 84 of the Maharashtra Prohibition Act, 1949 (for short “said Act”).

4. Facts relevant for disposal of this petition are summarized thus :-

5. The petitioners herein have challenged the legality, validity and propriety of an F.I.R. No.49 of 2017, dated 04.02.2017 registered with Kothrud Police Station, Pune for the alleged offences mentioned hereinabove and the charge-sheet filed therein. According to the prosecution, the petitioners were found drinking liquor in a common drinking house and thereby rendered themselves liable for penalty within the meaning of Section 84 of the said Act.

6. Having perused the FIR, statement and other material on record, we do not find disclosure of any cognizable offence, inasmuch as, penalty under Section 84 of the said Act. Section 84 of the said Act provides a fine to the extent of Rs.5,000/-. In light of this fact, the FIR does not disclose cognizable offence justifying investigation by the police under Section 156(1) of the Cr.P.C.

7. Secondly, the allegations made in the FIR, even if they are taken at their face value by accepting the same in its entirety, do not *prima facie* constitute any offence or make out any case against the petitioners. As already stated, the petitioners were found drinking in a common drinking house. It appears that there is no blood test report on record along with the charge-sheet, establishing the fact that the petitioners had, in fact, consumed liquor in the “common drinking house”, save and except, the statement of the Investigating Officer, who had conducted raid at the relevant time and had arrived at his subjective satisfaction that the petitioners were smelling alcohol.

8. In view of this peculiar facts and also the observations made by the two Division Benches of this Court *qua* the same crime, wherein

the petitioners were identically placed, we are of the considered view that this petition also needs to be allowed in light of the observations made by the two co-ordinate benches in Writ Petition No.2997 of 2017 decided on 20.09.2017 (Coram : R.M. Savant & Sandeep K. Shinde, JJ) and in Writ Petition No.3934 of 2017, decided on 07.11.2017 (Coram : Ranjit More & Dr. Shalini Phansalkar-Joshi, JJ).

9. As such, the petition will have to be allowed and accordingly allowed in terms of prayer clause (b). The FIR bearing C.R. No. 49 of 2017, dated 04.02.2017 registered with the Kothrud Police Station, Pune and the proceeding in Summary Criminal Case No.240007 of 2017, pending before JMFC, Pune for the alleged offences punishable under Sections 65(e), 68(a) and (b) and 84 of the Maharashtra Prohibition Act, 1949 is quashed and set aside.

10. Rule is made absolute in the aforesaid terms.

11. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]