

Dusane

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

WRIT PETITION NO.4603 OF 2021

Jitendra Ratnakar Kamat

...Petitioner

Versus

1. The State of Maharashtra

2. Sr. Inspector of Police, Jogeshwari
Police Station

...Respondents

Mr. Sunny Aaron Waskar a/w Dilip Gupta i/by Ashok Shukla for Petitioner

Mr. K.V. Saste, APP for the Respondent–State.

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.**

DATED : 6th SEPTEMBER 2022

ORDER :

1 Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties, is taken up for final disposal.

3. By this petition, the Petitioner seeks quashing and setting aside of C.R. No. 295 of 2014, registered with the Jogeshwari Police Station, Mumbai and all consequential proceedings arising thereto.

4. Learned counsel for the Petitioner submits that even if the contents of the FIR and the charge-sheet are perused, there is no material to connect the Petitioner with the alleged offence. He submits that no role has been ascribed to the Petitioner and that except for mentioning the Petitioner's name, there is absolutely no evidence on record to connect the Petitioner with the alleged offence. Learned counsel for the Petitioner submitted that even if the prosecution case is taken as it stands, the provision of Section 294 of Indian Penal Code will not be attracted, as against the Petitioner. Learned counsel in support of his submission relied on the judgment of this Court dated 14th January 2021 in the case of **Mr. Rushabh Minishkumar Mehta and Another Vs. State of Maharashtra** passed in **Criminal Writ Petition (Stamp) No. 4799 of 2020**.

5. Learned APP does not dispute the fact, that except mentioning the name of the Petitioner, no role is ascribed to the Petitioner either in the F.I.R. or in the entire charge-sheet. He however submits, that the material collected by the Police indicates that the Petitioner was present at the spot,

when the raid was conducted.

6. Perused the papers. The Petitioner is arraigned as an accused alongwith other accused in C.R. No. 295 of 2014, registered with the Jogeshwari Police Station, Mumbai, for the alleged offences punishable under Section 294 read with 34 of Indian Penal Code and Section 33 (W) of the Maharashtra Police Act. After investigation, charge-sheet was filed in the said case.

7. It appears that the Petitioner learnt of his name in the aforesaid C.R. much later only after the charge-sheet was filed. We have perused the F.I.R. and the charge-sheet filed with the assistance of the learned counsel for the parties. According to the prosecution, the Petitioner is alleged to have committed an offence punishable under Sections 294 of the Indian Penal Code. The said Section read thus :

"294. Obscene acts and songs : Whoever, to the annoyance of others :

- (a) does not obscene act in any public place, or
- (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

8. A perusal of the F.I.R. and the charge-sheet show that the only allegation as against the Petitioner is, that he was present at the spot when the ladies were dancing in an obscene manner. A perusal of the charge-sheet shows that no specific allegation has been made as against the Petitioner nor any specific role ascribed to him. The Petitioner is stated to be only present at the time when raid was conducted by the Police i.e. when the ladies were found to be dancing in an obscene manner.

9. The material as stated aforesaid is not sufficient to show the complicity of the Petitioner in the aforesaid crime. The Apex Court in the case of *State of Haryana and Others Vs. Bhajan Lal and Others*¹, has laid down certain tests, as to when, the FIR can be quashed. **Para 102** of the said judgment is relevant. The said paragraph reads thus:

"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad

1 1992 Supp.(1) Supreme Court Cases 335

kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by Police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint or the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceedings against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. Having perused the charge-sheet, we find the Petitioner's case will be squarely covered in the clauses (1) and (3) as stated in the aforesaid judgment. As noted above, the Petitioner's name is merely mentioned with other accused and no role has been ascribed to him.

11. As far as Section 33(W) of the Maharashtra Police Act is concerned, there is no material in the entire charge-sheet to indicate that the ingredients of said offence are made out as against the Petitioner.

12. Considering what is stated hereinabove, we quash and set aside C.R. No. 295 of 2014, registered with the Jogeshwari Police Station, Mumbai including the charge-sheet and the consequential proceeding arising thereto, qua the Petitioner.

13. Rule is made absolute on the aforesaid terms and the Petition is disposed of.

14. All parties to act on authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.

BHALCHANDRA
GOPAL
DUSANE

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