

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

CRIMINAL WRIT PETITION NO. 4593 OF 2018

1. Nandan Jayant Pendsey	
2. Parmita Nandan Pendsey	... Petitioners
Versus	
State of Maharashtra	... Respondent

Mr. Aabad Ponda, Senior Advocate i/b Mr. Aditya Mithe, for the Petitioners.

Mr. S.S. Hulke, APP for the Respondent – State.

Mr. Atmaram Tukaram Kadam, ASI, Wadala T.T. Police Station, present.

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

DATE : 6th DECEMBER, 2022.

ORDER: [Per Revati Mohite Dere, 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. Learned A.P.P waives notice on behalf of the respondent–State.

3 By this Petition, the petitioners seek quashing of the FIR, bearing C.R. No. 565 of 2014 registered with the Wadala T.T. Police Station, Mumbai, for the alleged offence punishable under Section 188 of the Indian Penal Code (“I.P.C.”).

4 Mr. Ponda, learned Senior Counsel for the petitioners submits that the incident in question is stated to have taken place on 23rd August, 2014, as per the FIR, whereas the Notification dated 21st August, 2014 came into force with effect from 24th August, 2014 and hence, the question of the petitioners’ committing the alleged offence under Section 188 of the I.P.C., does not arise. Learned Senior Counsel for the petitioners relied upon the decision of the Apex Court in the case of **State Of Haryana and Ors. vs Bhajan Lal and Ors.**¹. He submits that taking the prosecution case as it stands, no offence as alleged is made out as against the petitioners.

5 Learned APP is unable to justify the lodging of FIR having regard to the dates as set out aforesaid.

¹ 1992 Supp(1) Supreme Court Cases 335

6 Perused the papers. On 21st August, 2014, the Commissioner of Police, Mumbai vide Notification bearing No. CP/11(6)144(4)/2014 issued under Section 144(1) of the Criminal Procedure Code, directed that no residential or commercial premises would be given on rent by the concerned landlord till such time, as the particulars regarding the proposed tenant/licensee are provided to the local police station. Admittedly, the said Notification was displayed at a prominent location.

7 According to the respondent-complainant, on 23rd August, 2014, the police of the Wadala T. T. conducted an inspection within its jurisdiction. During the course of inspection they learnt that one Mrs. Xelene Dabas was living as a tenant in a flat situated at Bhakti Park, Wadala. Upon making enquiries, it was revealed that the said flat was owned by the petitioners. As according to the police of the Wadala T.T. Police Station, the petitioners had not complied with the directions given in the Notification dated 21st August, 2014, the aforesaid C.R. came to be registered as against the petitioners, for the alleged offence punishable under Section 188 of the Indian Penal Code.

8 After investigation charge-sheet was filed and the case is presently pending before the learned Metropolitan Magistrate, 29th Court, at Dadar bearing CC No. 162/SW/2015. Admittedly, the petitioners have been prosecuted for violation of the Notification dated 21st August, 2014 i.e. the Order of the Commissioner of Police, Mumbai, bearing Order No. CP/11(6)144(4)/2014. The said Notification is annexed at Exh. B (page 30) of the Petition. A perusal of the said Notification shows that it was published on 21st August, 2014. The relevant para 5 of the said Notification reads as under:

“ 5. This order shall come into force with effect from 24th August 2014 and shall be effective for a period of 60 days upto 22nd October 2014 (both days inclusive) unless withdrawn earlier.”

9 It is thus clear, that the said Order of the Commissioner of Police, Mumbai, was to come into effect from 24th August, 2014. The incident admittedly is of 23rd August, 2014. Since, the alleged infraction of law, was not an offence, the petitioners' could not have been prosecuted. Penal provisions, admittedly, have no retrospective application. Having regard to the aforesaid, the petitioners' case is

squarely covered by clauses 1 and 3 of para 102 of **Bhajan Lal (Supra)**. The relevant clauses 1 and 3 read thus;

“ 102.

- (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 to not prima facie constitute any offence or make out a case against the accused.
- (2)
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

10 Having regard to what is stated aforesaid, the Petition is allowed and the FIR, bearing C.R. No. 565 of 2014 registered with the Wadala T.T. Police Station, Mumbai, and consequently, the proceeding pending before the learned Metropolitan Magistrate, 29th Court, at Dadar, bearing C.C.No.162/SW/2015 are quashed and set-aside.

11 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

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

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.

REKHA
PRAKASH
PATIL

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by REKHA
PRAKASH PATIL
Date: 2022.12.19
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