

Dusane

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

WRIT PETITION NO.11221 OF 2023

Urmila S. Shetty
[M/s Shree Krishna Bhavan
(Swagat) Bar & Restaurant]

...Petitioner

V/s.

The Commissioner of Police
Thane (City), District Thane & Anr.

...Respondents

Ms. Veena Thadani for Petitioner.

Mr. P.G. Sawant, AGP for State.

CORAM: MADHAV J. JAMDAR, J.
DATE: 27th September 2023

P.C.:

1. Heard Ms. Thadani, learned Counsel appearing for the Petitioner and Mr. Sawant, learned AGP appearing for the State.

2. It is the contention of Ms. Thadani that the Petitioner's Orchestra license has been illegally cancelled by the impugned order dated 4th August 2023 passed by Deputy Commissioner of Police, Headquarter No.1, Thane. It is submitted that the said show cause notice merely makes a reference to the pendency of criminal prosecution and that detail show cause notice is not served regarding the aspects which are considered in the

impugned order dated 4th August 2023. Therefore, it is her contention that the impugned order is passed by violating the principles of natural justice. It is her further submission that the show cause notice makes reference to various criminal cases filed against the Petitioner. She relied on the judgment of Division Bench of this Court passed in Civil Writ Petition No. 5675 of 2006 on 12th October 2006 and contended that pendency of the criminal proceedings cannot be a ground for cancellation of licence. Paragraphs 2 to 6 of the said order passed by the Division Bench, reads as under:

2. The learned Advocate for the Petitioner has, however, argued that in the light of the judgment of this Court in Writ Petition No. 7271 of 1999 (Dillip J. Bhatia V/s The Commissioner of Police, Thane), dated 20th July, 2000, **no order cancelling the petitioner's licence could be passed, until and unless a conviction had been recorded.** It has also been argued that the petitioner was admittedly not involved in any criminal matter and action, if at all, was warranted against the manager and waiters alone.

3. The learned Assistant Government Pleader for the respondent, however, pointed out that as two minor girls had been abused, the licence of the lodging house had been rightly cancelled.

4. We have heard the learned Advocates for both the parties and gone through the judgment in the cited case. The relevant portion reads as under:

"This Court had held that pendency of prosecution cannot be a ground for refusing to renew a licence to carry on the

said business. Principle underlying the said decision is that **even if a criminal case is pending, that by itself cannot be a ground so long as the licence holder himself or his agent or servant is convicted of the said offence. Our criminal jurisprudence recognizes that until a person is tried and held guilty, he should be treated as innocent.** Other decisions have also dealt with the same subject matter, which have been included in the writ petition compilation. I do not think that it is necessary for me to refer to each of the said decision **as the consistent view of this Court has been that pendency of the criminal proceedings cannot be a ground for cancellation of licence.** Accordingly, petition should succeed on this issue".

5. We find that the above quoted observations apply to the facts of the present case. We have, therefore, no option but to set aside the impugned orders and allow the petition. We make it clear that if the prosecution results in a conviction, it would be open to the respondents to reconsider the matter in the light of the findings of the Criminal Court.

6. Rule is made absolute in terms of prayer clause (a)."

(Emphasis added)

3. Mr. Sawant, learned AGP submitted that the impugned order is passed not only on the basis of the pending criminal cases but also on the basis of certain other violations of the conditions of orchestra licence. However, he fairly admitted that the show cause notice is very cryptic and the main emphasis

therein is on the pending criminal prosecution. However, he states that violations which are alleged against the Petitioner are of very serious nature. In view of this position, he states that he has taken instructions and accordingly, show cause notice dated 5th December 2022 itself will be withdrawn and a detailed fresh show cause notice will be issued to the Petitioner. As show cause notice itself is withdrawn, the impugned order dated 4th August 2023 passed by Deputy Commissioner of Police, Head Quarter-I, Thane does not survive and is accordingly quashed and set aside.

4. Mr. Sawant, learned AGP states that the fresh show cause notice will be served on the Petitioner within a period of one month and thereafter fresh order will be passed.

5. In view of above, nothing survives in the present Writ Petition and accordingly the same is disposed of.

6. It is clarified that all the contentions of both the parties on merits are expressly kept open.

(MADHAV J. JAMDAR, J.)

BHALCHANDRA
GOPAL DUSANE

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