

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

CRIMINAL APPLICATION NO.1428 OF 2019

1. Vicky Hundraj Nagdev
2. Sachin Bharatkumar Oswal ... Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Satyajeet P. Dighe, for the Applicants.

Mr. K. V. Saste, A.P.P for the Respondent – State.

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

DATE : 23rd JANUARY 2023

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent – State.
3. By this application, the applicants seek quashing of the FIR bearing C.R. No. 92 of 2019 registered with the Andheri Police

Station, Mumbai, for the alleged offences punishable under Sections 294, 114 r/w 34 of the Indian Penal Code ('IPC') and consequently the proceeding pending before the learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai, being Case No.PC/6503338/2019.

4. Learned counsel for the applicants submits that taking the prosecution case as it stands, no offence as alleged is made out, *qua* the applicants. He submits that no role has been ascribed to the applicants and that the only allegation is that they were found sitting in the bar at the time when the raid was conducted. According to the learned counsel for the applicants Section 294 of the IPC will not be attracted, as far as the applicants are concerned. In this connection, the learned counsel for the applicants relied on the judgment of this Court in the case of *Rushabh Minishkumar Mehta and Another v/s State of Maharashtra*¹, as well as the order passed in the case of *Jitendra Ratnakar Kamat v/s The State of Maharashtra and Another*². He submits that the case of the applicants is squarely covered by the

1 Criminal Writ Petition (Stamp) No.4799 of 2020 dated 14th January 2021.

2 Criminal Writ Petition No.4603 of 2021 dated 6th September 2022.

decision of the Apex Court in the case of *State of Haryana and Others v/s Bhajan Lal and Others*³.

5. Learned APP does not dispute the fact that no role has been ascribed to the applicants either in the FIR or in the entire charge-sheet. He submits that the police charge-sheet only indicates that the applicants were present at the spot when the raid was conducted.

6. Perused the papers. According to the prosecution on 20th February 2019, the complainant and other police officers attached to Andheri Police Station, Mumbai, were called by Police Inspector - Padavi and they were informed that reliable information was received that in a restaurant i.e. 'Arrow Punjab Restaurant and Bar', there where bar dancers who were dressed in an inappropriate way and were dancing on music and making obscene gestures at the patrons sitting in the said bar. The said activity was stated to be at the instance of the bar owner, Manager, Cashier and other employees. Pursuant

3 1992 Supp (1) SCC 335

thereto, a raid was conducted and it was found that 10 to 11 bar dancers were dancing on music and were making obscene gestures. As far as the applicants are concerned, they are alleged to have been sitting in the said restaurant at the time when the raid was conducted. Admittedly, no role has been ascribed to the applicants. After investigation, charge-sheet was filed in the said case. Section 294 of the IPC reads thus;

“294. Obscene acts and songs —

Whoever, to the annoyance of others—

a) does any 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.”

7. A perusal of the FIR and the charge-sheet shows that the allegation as against the applicants is only that they were present at the spot, when the ladies were allegedly dancing in the obscene manner. Admittedly, no specific allegation has been made as against

the applicants nor any specific role has been ascribed to them.

8. Considering the material on record, the same is not sufficient to attract the provisions of Section 294 of the IPC. The Apex Court in the case of *Bhajan Lal (supra)*, has laid down certain tests, as to when, an FIR can be quashed. The relevant paragraph is para 102 of the said judgment. The said paragraph reads thus:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of 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 the 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 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 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.*
- (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 ever reach a just conclusion that there is sufficient ground for proceeding 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.”

9. Having perused the charge-sheet, we find that the case of the applicants is squarely covered by clauses (1) and (3) of para 102 of the aforesaid judgment. Section 114 of the IPC will also have no application, inasmuch as, there is no material to show that the applicants have in any way abetted commission of the said offence.

10. The application is accordingly allowed and the FIR bearing C.R. No. 92 of 2019 registered with the Andheri Police Station, Mumbai, and consequently the proceeding pending before the learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai, being Case No.PC/6503338/2019, are quashed and set-aside.

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

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

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.