

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

CRIMINAL APPLICATION NO.1616 OF 2019

Balaji
G.
Panchal

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Balaji G.
Panchal
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Sachin Bhartakumar Oswal

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Abhijeet Khade i/by Satyajeet Dighe, for the Applicant.

Smt. M. M. Deshmukh, APP for the Respondent/State.

Mr. Vijendra Waghmare, API, Andheri Police Station (current posting Dahisar Police Station) – present.

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ.**

DATE : 7th OCTOBER, 2023

PC.

1. The submissions are, the offence under charge-sheet in Crime No.481 of 2019 registered on 15th August, 2019 punishable under Sections 294, 114 r/w 34 of IPC and Sections, 8(1), (2) and (4) the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity to Women (Working therein) Act, 2016 (hereinafter referred to as “the Act” for the sake of brevity) is liable to be quashed and set aside, as the necessary ingredients of the offence alleged against the applicant, particularly, under Section 8 of Act are not satisfied.

2. According to counsel for the applicant, even if what has been stated in the charge-sheet is taken to be correct at its face value, still it cannot be inferred that the applicant was promoting the dancers by offering any tip in monetary form or provoking them to make such performance as against the money offered.

3. As against this, learned APP would urge that the aforesaid defence of the applicant cannot be gone into at the admission stage and same should be made subject matter of trial.

4. We have appreciated the submissions.

5. The fact remains that the provisions of Sub-Section (4) of Section 8 the Act are attracted, in case, if the concerned person is throwing coins, currency notes or any other article or anything which can be monetized on the stage or hand over personally or through any means coins, currency notes or any articles etc. Similar is not the case of the prosecution against the applicant. The role attributed to the applicant is only that of attending the performance. As such, the very allegation of offence punishable under Sub-Section (4) of Section 8 of the Act cannot be said to be justified in satisfaction of the ingredients of the offence from the available material. As far as other other offences alleged in the FIR are concerned, there is no attribution about the same against the applicant but same is against the performer. In this background, reliance placed by counsel the applicant on the order dated 19th April, 2023 delivered in Criminal Application No.632 of 2021 can be said to be justified.

6. As such, the present application stands allowed in terms of prayer clause (a-i) only to the extent of the applicant.

[N. R. BORKAR, J.]

[NITIN W. SAMBRE, J.]