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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1708 OF 2024

- 1) Nirav Raval
Indian Inhabitant, Aged- 48 years,
Occupation- Business,
Residing at 14, Lalita Park Society,
Near Ishwar Bhuvan, Navrangpura,
Ahmedabad- 380009.

2) Kaushal Shah
Indian Inhabitant, Aged- 49 years,
Occupation- Business,
Residing at 25, Dashaporwad Society,
Paldi, Ahmedabad- 380007.

3) Chirag Mehta
Indian Inhabitant, Aged- 49 years,
Occupation- Business,
Residing at Shiv Sadan, 4 Dada Rokadnath,
Society, Narayan Nagar, Paldi,
Ahmedabad- 380007.

4) Pravan Desai
Indian Inhabitant, Aged- 48 years,
Occupation- Service,
Residing at 112, Saket Row House,
Memnagar, Ahmedabad- 380052.
- Petitioners

V/s.

- 1) The State of Maharashtra
(Through the Senior Police Inspector,
Gamdevi Police Station)

2) Rajeshkumar Feku Tiwari
Indian Inhabitant, Aged- 51 years,
Occupation- Police Officer,
(Through Gamdevi Police Station)
- Respondents

Ms. Laxmi Raman a/w Nigel Quraishy for the Petitioners.
Mrs. M. M. Deshmukh, APP for the State.

**CORAM : A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 03rd MAY, 2024
PRONOUNCED ON : 12th JULY, 2024**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.]

1) Petitioners, accused in Criminal Case No. 23/PW/2020 pending before the learned Metropolitan Magistrate, 40th Court, Girgaum, at Mumbai, arising out of Crime No. 191 of 2019, under Sections 294, 114 r/w 34 of the Indian Penal Code and under Sections 3, 8(1)(2)(3)(4) of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (working therein) Act, 2016, have filed this petition for seeking quashing of the said case.

2) Rule. Rule made returnable forthwith and taken up for final hearing by consent of learned Advocate for the Petitioners and learned APP for the State.

3) The case of the prosecution is that, on 18th September, 2019, informant- Rajeshkumar Tiwari, Police Head Constable was on surveillance duty to inform about the objectionable activities taking place in bar and restaurants within his jurisdictional area. During the course of said duty, he visited at Sandeep Palace Bar and Restaurant, at 49 August Kranti Marg, Mumbai and found that, two women were dancing there in an obscene

manner. Immediately, he informed that fact on phone to Girgaum Police Station. At about 21.10 hours, police team along with two Punch, one punter and in-charge of Social Service Branch went to the said hotel and verified the situation there. It confirmed the information conveyed by the informant. At that time, they saw that, two women were dancing in an obscene manner and customers gave Indian Currency notes to waiter and told him to blow the said notes on the dancing women and thus, they were aiding and abetting them to do the dance. The Petitioners were present amongst said customers.

3.1) The police recorded spot panchnama. Thereafter, the informant lodged the report. Pursuant to which the said FIR No. 191 Of 2019 came to be registered. The Petitioners and other accused persons came be to arrested. On completion of investigation police submitted the charge-sheet for the said offences. However, according to the Petitioners, they are innocent, hence, this Petition.

4) Learned Advocate for the Petitioners submitted that, except the material that, at the relevant time the Petitioners were present in the said bar, there is absolutely no evidence in the entire charge-sheet for supporting the prosecution claim that, the Petitioners instigated or encouraged the said two women to dance by causing the waiter to blow Indian Currency notes on them. Mere presence of the Petitioners in the said bar and exhibition of dance at that time, is not amount to aiding and abetting the commission of

the offence alleged against Petitioners. No other overt-act is attributed to the Petitioners. Therefore, their prosecution would be abuse of process of law. Hence, said case may be quashed qua the Petitioners.

5) In contrast, learned APP submitted that, not only the Petitioners were present at the scene of the offence, but they also aided and abetted the dancing women to continue dancing in obscene manner by blowing money on them through the waiter. As such, there is *prima facie* case against the Petitioners.

6) In view of rival submissions, we have perused the F.I.R., witnesses' statement and charge-sheet. The Petitioners have been figured in the F.I.R. as 'customers', present in the hotel, when the women were dancing. However, the concerned waiter could not be examined by the Investigating Officer as he had already left. There is no material to show that, when the customers gave the Indian Currency notes to the waiter, the Petitioners were amongst said customers and they only gave currency notes to the waiter with a specific instruction to blow it on the dancing women. No other specific overt-act has been attributed to the Petitioners so as to attract the offences punishable under Sections 294, 114 r/w. 34 of I.P.C. against them. Therefore, mere presence of the Petitioners at the relevant place and time, as 'customers', when the two women were dancing allegedly in obscene manner, is not sufficient to attract the said offence.

7) In *Manish Parshottam Rughwani And Ors. Vs. The State of*

*Maharashtra and anr.*¹ the Co-ordinate Bench of this Court quashed the F.I.R. for similar offence alleged against the customers, for the reasons that, the Petitioners therein were merely present in the bar at the relevant time. However, no specific overt-act was attributed to them. For this conclusion the Division Bench considered the decisions of the this Court in the case of *Jitendra R. Kamat Vs. The State of Maharashtra and anr.*² and *Rushabh M. Mehta and anr. Vs. State of Maharashtra.*³ The decision in *Manish Parshottam Rughwani (supra)* is clearly applicable to the case in hand.

8) In view thereof, the Petition deserves to be allowed and accordingly, the Petition is allowed in terms of prayer clause (a).

9) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

1. Cril. Writ Petition (ST) No. 4343 of 2024, decided on 05.04.2024,
2. Cril. Writ Petition No. 4603 of 2021 decided on 06.09.2022.
3. Cril. Writ Petition (ST) No. 4799 of 2020 decided on 14.01.2021.