



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APL) NO.488 OF 2024

- 1) Piyush Suresh Wakodikar, Aged 31 years Occupation Business, Resident of Plot No.12, Sonegaon, Khamla, Tahsil and District Nagpur.
- 2) Shubham Ramesh Aamdare, Aged about 31 years, Occupation - Business, Resident of Chhatrapati Nagar, Tahsil and District Nagpur.

.... Applicant(s)

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- 1) The State of Maharashtra, Through Police Station Officer, Police Station, Sawner, Tahsil Saoner, District Nagpur.
- 2) Ankush S./o Ramesh Mule, Aged major, Head Constable, Police Station, Saoner, Tahsil Saoner, District Nagpur.

.... Non-applicant(s)

Mr. A.S. Manohar, Advocate for the applicant/s
Mr. M.K. Pathan, APP for the non-applicant/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 25.07.2024.

ORAL JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J)

1. Heard Mr. A.S. Monohar, Advocate for the applicants and the learned APP for the non-applicant No.1/State. None appears for the non-applicant No.2, though served.
2. **Rule.** Rule is made returnable forthwith. Heard finally by the consent of the learned Advocates for the parties.
3. The present application has been filed under Section 482 of the CrPC for quashing FIR, vide C.R. No.3 of 2024 dated 01.01.2024 registered with police Station : Sawner for offences punishable under Section 188 of the Indian Penal Code (IPC) and under Sections 4 and 20 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short “the Cigarette Act”).
4. The learned Advocate for the applicants submits that the perusal of the FIR would show that the offences under which the crime has been registered, those ingredients of the offences are not attracted. For Section 188 of the IPC, there is no compliance under Section 195 of the CrPC. Section 195 of the CrPC stipulates that

no Court shall take cognizance of any offence punishable under Section 188 of the IPC, except on complaint in writing from the public servant, who had promulgated such order, or from some other public servant, to whom he is administratively subordinate. Herein, the FIR has been lodged by the Police Constable. Admittedly, he is not an Officer, who had promulgated the order. Further, as regards Section 4 of the Cigarette Act is concerned, accused should be smoking in public place and the 'public place' is defined under Section 3(l) of the Cigarette Act as "a place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open space". If we consider the FIR, it is to be noted that the applicants were found smoking 'hookah' in a private farm house. The entire farm house was stated to be taken on rent by the applicants for new year celebrations and no member of public was present there. Therefore, the said section is also not attracted.

5. He further submits that as regards Section 20 of the Cigarette Act is concerned, it prescribes punishment for failure to give specific warning on cigarette and also tobacco product. The said Section applies to Producers, Manufacturers, Sellers and Distributors and cannot be attracted to the case of consumption of tobacco product. It is not the case of the prosecution that the applicants are Producers, Manufacturers, Sellers and Distributors of cigarette or hookah tobacco product. Therefore, he prays for quashment of the FIR. He also relies on the decision in ***Swararaj alias Raj Shrikant Thackeray Vs. State of Maharashtra*** [2024 (1) ABR (CRI) 5], wherein cognizance was taken of the offence by a Magistrate without any written complaint and therefore, it was held that the prosecution stood vitiated as barred under Section 195(1)(a) of the CrPC.

6. The learned APP submitted that the charge-sheet was ready and it has been submitted before the learned Magistrate on 03.05.2024. He made the copy of the charge-sheet available and submits that the bar under Section 195(1)(a) of the CrPC would

come into play when the Magistrate decides to take cognizance and it is not a bar for registration of the offence.

7. Though it appears that the charge-sheet is now filed, we do not want to prolong the matter by asking the applicants to carry out the amendment, we can take note of the same. As regards Section 188 of the IPC is concerned, definitely it requires compliance under Section 195(1)(a) of the CrPC. Here, the charge-sheet appears to have been filed recently and we are not aware as to whether the learned Magistrate has taken cognizance of it or not. The facts in *Swararaj alias Raj Shrikant Thackeray* (supra) would slightly differ when it was brought on record that the cognizance of the offence was already taken. Here, it is stated that the notice under Section 149 of the CrPC was not given to the applicants yet. Even if that would have been issued, it would be a private notice to the accused, which is not contemplated. As regards ingredients of Section 188 of the IPC is concerned, they are not attracted when the order is not promulgated by the informant and the copy of the said order appears to have not been annexed with the charge-sheet. The

complainant is not the appropriate authority who had issued any order. Therefore, we are of the opinion that the Magistrate cannot take cognizance in such a situation.

8. As regards the Sections under the Cigarette Act are concerned, certainly the FIR and the statements of the witnesses under Section 161 of the CrPC, would show that the applicants, who are stated to have been found smoking hookah in the private farm, which is not a public place and they were not manufacturers of the tobacco product. Hence, it would be a futile exercise to ask the applicants to face the trial, when it has come on record that the charge-sheet is filed. The case is squarely covered under the principles of *State of Haryana V. Bhajan Lal* (AIR 1992 SC 604). Hence, we pass the following order:

- (i) The application is **allowed**.
- (ii) The FIR, vide C.R. No.3 of 2024 dated 01.01.2024 registered with police Station : Sawner for offences punishable under Section 188 of the Indian Penal Code (IPC) and under Sections 4 and 20 of the Cigarette Act and

charge-sheet No.181 of 2024 dated 03.05.2021, presented before the learned Judicial Magistrate First Class, Sawner, stand quashed and set aside.

Rule accordingly. No costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]