



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 CRIMINAL WRIT PETITION NO.1029 OF 2019

YOGESH GOPAL SALI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. V.S. Undre, Advocate for petitioner

Mrs. R.P. Gour, APP for respondent Nos.1 to 4

Mr. Girish Nagori, Advocate for respondent Nos.5 to 7

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 03rd FEBRUARY, 2025

ORDER :

1 Present writ petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India for following relief :

“(A) By issuing writ of mandamus or any other writ in the like nature, this Hon’ble Court may kindly be pleased to direct the respondents to take stringent action by filing the appropriate criminal proceedings against respondent Nos.5 to 7 as per the representations filed by the present petitioner.”

2 We would like to say that in fact, the writ is prayed as against

respondent Nos.3 and 4, mainly for taking action against respondent Nos.5 to 7.

3 Heard learned Advocate Mr. V.S. Undre for petitioner, learned APP Mrs. Priya R. Bharaswadkar for respondent Nos.1 to 4 and learned Advocate Mr. Girish Nagori for respondent Nos.5 to 7.

4 Learned Advocate for petitioner submits that petitioner is the licence holder for sale of foreign liquor, which he has got it renewed from time to time. It is the petitioner's case that respondent Nos.5 to 7 are carrying out illegal business of selling liquor in the nearby area where the shop of petitioner situated. Petitioner had made several complaints to local authorities, whereupon, on some occasions action has been taken against respondent Nos.5 to 7, however, the activities of respondent Nos.5 to 7 have not got down and it is causing loss to petitioner. As respondent Nos.5 to 7 are carrying the illegal business, it is also loss of exchequer to the State. Details of the offences against respondent Nos.5 to 7 have been given and it is the say of petitioner that due to faulty investigation in some matters there is an acquittal. No stringent action has been taken against respondent Nos.5 to 7 and, therefore, writ petition.

5 Learned APP relies on the affidavit-in-reply of Ramkrishna

Mahadu Kumbhar, the then Police Inspector, Jalgaon Taluka Police Station, Tq. Jalgaon, wherein he has stated that respondent Nos.5 to 7 are illegally carrying out the business of illicit liquor, but at the same time he says that offences were registered against Subhash Dhangar between 2014 to 2019 under the provisions of Section 65-E of the Maharashtra Prohibition Act. One crime is registered against Govinda Dhangar and one against Bhushan Dhangar. However, all the accused have been acquitted from the respective charges from the concerned Court. He says that action under Section 56 of the Maharashtra Police Act cannot be taken against respondent Nos.5 to 7 as there are no offences registered against them under the provisions of Chapter XII, XVI, XVII of the Indian Penal Code.

6 At the outset, we would like to say that the petition appears to be only motivated due to the alleged loss in the business which cannot be the reason for exercise of constitutional powers of this Court. Now, as regards the action on the basis of alleged acts of carrying out business in illicit liquor is concerned, it appears that the action was taken but it has resulted into acquittal. Now, unnecessarily the Investigating Officer or the prosecution cannot be blamed.

7 Blanket order cannot be given for taking stringent action against

anybody. If the action of the person amounts to an offence, then there can be a First Information Report if the offence is cognizable, on behalf of State by the State agency or the representative of the State agency or even then if the act is personal, still amounting to offence then that person can file First Information Report, if offence is cognizable. If First Information Report is not lodged, then by adopting procedure laid down in **Lalita Kumari vs. Government of Uttar Pradesh and others** [AIR 2014 SC 187] the further action can be taken and the further course that would be available to such person would be to file an application under Section 156(3) of the Code of Criminal Procedure. No question then arises for invoking the constitutional powers under Article 226 of the Constitution of India. Here, the petitioner has not come with a case that in spite of his complaint now, with a specific date an offence was reported, but no action has been taken. The petitioner has not stated that he has adopted the procedure that has been laid down in **Lalita Kumari** (supra). Therefore, certainly, the writ petition in the form that has been filed cannot be entertained. But, at the same time, it would be open to respondent Nos.1 to 4 to take action as per the law whenever reported. With these observations, writ petition stands rejected.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

agd