

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10862 OF 2025

Hotel Sangeet Bar and Restaurant ...Petitioner

Versus

The State of Maharashtra and ors. ...Respondents

Mr. Jagdish Hegde, for the Petitioner.

Mr. P. G. Sawant, AGP for the State.

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2025.12.15
11:09:20 +0530

CORAM: N. J. JAMADAR, J.

DATED: 3rd DECEMBER, 2025

Order:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The challenge in this petition is to an order dated 14th May, 2025, passed by the Divisional Commissioner, Konkan Division, in Appeal No.12 of 2025, whereby an appeal preferred by the petitioner against an order of cancellation of Orchestra Performance Licence issued under the Rules for Licensing and Controlling of Places of Public Amusement (other than Cinemas) and Performances for Public Amusement, Including Melas and Tamashas, 1960 ("the Rules, 1960"), came to be dismissed.

3. The petitioner runs a restaurant under name and style of, 'Sangeet Bar and Restaurant' at Valpada, Bhiwandi, Thane. The petitioner has obtained all the requisite permissions and

1/7

Order corrected as per order dtd.12/12/2025.

licences to carry on the said business including an Orchestra Performance Licence, in the said hotel premises. As the petitioner was harassed by the then Senior P.I., Narpoli Police Station, the petitioner had reported the matter to the superiors.

4. The petitioner claims, respondent No.4, thus, had a grudge against the petitioner. Thus, on 31st July, 2023, a notice was served on the petitioner alleging, *inter alia*, that on 31st May, 2022 a raid was conducted at the hotel premises and five waitresses were found dancing and making obscene gestures and soliciting the attention of the customers. Hence, a crime was registered for an offence punishable under Section 294 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") against the waitresses, managers and employees of the said hotel. The aforesaid acts and conducts were in breach of the performance licence and, therefore, the petitioner was called upon to show cause as to why the licence be not revoked.

5. Eventually, by an order dated 5th August, 2023, the performance licence was cancelled.

6. Being aggrieved the petitioner preferred an appeal before the Divisional Commissioner under Section 33 of the Maharashtra Police Act, 1951 ("the Act, 1951"). By the

impugned order, the appeal came to be dismissed by affirming the order of the Deputy Commissioner.

7. Being further aggrieved, the petitioner has invoked the writ jurisdiction. An affidavit-in-reply came to be filed on behalf of the respondent. It was, *inter alia*, contended that, the licence has been cancelled for breach of the conditions of licence. Therefore, as the impugned action was in conformity with the Rules, 1960, this Court may not exercise the writ jurisdiction.

8. I have heard Mr. Hegde, the learned Counsel for the petitioner, and, Mr. Sawant, the learned AGP for the State, at some length.

9. Mr. Hegde would urge, the only reason ascribed for the cancellation of the licence is the registration of CR No.258 of 2022 against the petitioner, the waitresses, managers and other employees at the said hotel. Mere registration of the crime and pendency of the criminal proceedings cannot be a ground to cancel the performance licence. Mr. Hegde would urge that, by a series of judgments, this Court has enunciated that mere pendency of criminal cases cannot be a sustainable ground to revoke the licence.

10. Reliance was placed on a decision of a learned Single Judge of this Court in the case of *Dilip J. Bhatia vs. The*

*Commissioner of Police, Thane*¹ and a Division Bench judgment in the case of *Maruti Vitthal Gopale vs. The State of Maharashtra and another*², wherein the observations in the case of *Dilip Bhatia* (supra) were affirmed, and the judgments of this Court in the cases of *Suresh M. Mali vs. The State of Maharashtra and ors.*³ and *Ganpat Mahadev Patil vs. The State of Maharashtra and others*⁴.

11. In opposition to this Mr. Sawant, the learned AGP, supported the impugned order by canvassing a submission that the licence has been cancelled for breach of conditions of licence and not for mere registration of the offence against the petitioner.

12. From the perusal of the show cause notice, it becomes abundantly clear that, the substratum of the show cause notice was the registration of the offence punishable under Section 294 read with Section 34 of the Penal Code post the raid conducted by police on 13th May, 2022. In the said raid, the waitresses were allegedly found dancing and making obscene gestures and soliciting the attention of the customers. The

1 2001 1 BomCR 448.

2 WP/5675/2006, dtd.12/10/2006.

3 WP/7848/2011, dtd.24/11/2011.

4 WP/2491/2013, dtd.20/6/2013.

alleged breach of conditions stipulated in the licence was in reference to the alleged dance performance and act of the waitresses. The order passed by the Deputy Commissioner of Police on 5th August, 2023 cancelling the licence also proceeds on the same premise. The registration of CR No.258 of 2022 for the offence punishable under Section 294 read with Section 34 of the Penal Code seems to have primarily weighed with the Competent Authority in revoking the licence. Indisputably, the petitioner or any of the waitresses or other employee of the said hotel is not yet found guilty of the said offence.

13. In this backdrop, the reliance placed by Mr. Hegde on the decision in the case of *Dilip Bhatia* (supra) appears to be well-founded. In the said case, after referring to a previous decision of the Division Bench in the case of *Kimatram Harpaldas Aswani vs. The State of Maharashtra and others*⁵, this Court has held that pendency of prosecution cannot be a ground for refusing the renewal of licence to carry on the business. Principle underlying the said decision was that even if a criminal case is pending, that, by itself, cannot be a ground so long as the licence holder himself or his agent or servant is not convicted of the said offence. Our criminal jurisprudence

5 WP/1041/1985, dtd.16/8/1985.

recognises that until a person is tried and held guilty, he should be treated as innocent.

14. In the case of ***Maruti Gopale*** (supra), the Division Bench referred to the aforesaid observation of the learned Single Judge in the case of ***Dilip Bhatia*** (supra) and quashed and set aside an order of cancellation of licence on the ground that, the case was registered under Sections 363, 366(B), 376, 342 and 34 of the Penal Code and under Sections 4, 5, and 7 of the Immoral Traffic (Prevention) Act, 1956 against the employees of the petitioner therein for confining two minor girls for the purpose of using them for prostitution.

15. Similar view has been taken by this Court in the cases of ***Suresh Mali*** (supra) and ***Ganpat Patil*** (supra).

16. The position which thus emerges is that, by a line of decisions, this Court has consistently held that, mere pendency of a prosecution for commission of the offences cannot be a ground for cancellation of the licence to run a business in the premises or performance or amusement licence. The foundational premise is that, the indictment on the strength of which a crime has been registered is yet to be proved at the trial. In the event conviction is recorded, different consideration come into play. Till the time the matter is in the realm of

allegations only, the accused cannot be visited with the consequences of revocation of licence.

17. The endeavour of Mr. Sawant to wriggle out of the situation by submitting that, the licence has not been cancelled for the sole reason of the registration of the offences but for the breach of conditions does not merit acceptance as the allegation of breach of conditions also draws support and sustenance from the very incident which allegedly led to the registration of the offence. Therefore, the impugned orders cannot be sustained.

18. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned order dated 5th August, 2023 as well as the order dated 14th May, 2025 passed by the Divisional Commissioner, Konkan Division, in Appeal No.12 of 2025, stand quashed and set aside.
- (iii) The performance licence stands restored.
- (iv) Rule made absolute in the aforesaid terms.

No costs.

[N. J. JAMADAR, J.]