

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 373 OF 2025

- | | | | |
|----|--|---|----------------|
| 1. | Nimesh Dinesh Acharya, |] | |
| | Aged : 48 years, Occ: Service, |] | |
| | Residing at :- |] | |
| | A/105, Sai raj Garden, Iraniwadi Road |] | |
| | No.3, Kandivali (West), |] | |
| | Mumbai – 400067 |] | |
| 2. | Pramod Arvindkumar Paurana |] | |
| | Aged : 49 years, Occ : Service, |] | |
| | Residing at :- |] | |
| | Room No.5, Guru Nanak Apartment, |] | |
| | 1 st Floor, Shankar Lane, |] | |
| | Opp. Shankar Mandir, Kandivali (West), |] | |
| | Mumbai – 400067 |] | ...Petitioners |

Vs.

- | | | | |
|----|--------------------------------|---|----------------|
| 1. | The State of Maharashtra |] | |
| | (through Malad Police Station) |] | |
| 2. | Mangesh Arjun Pawar, |] | |
| | Aged 40 years, Occ : Service, |] | |
| | Residing at :- |] | |
| | 75/55, B.D.D. Chawl, Worli, |] | |
| | Mumbai – 400018 |] | ...Respondents |

Mr. Vrushabh Savla for Petitioners.

Smt. M. M. Deshmukh, APP for Respondent No. 1 - State.

CORAM	:	A. S. GADKARI AND RAJESH S. PATIL, JJ.
RESERVED ON	:	24 th JULY 2025
PRONOUNCED ON	:	5 th AUGUST 2025

JUDGMENT (Per Rajesh S. Patil, J.) :-

1) By this Petition, the Petitioners are seeking quashing of C.C.No. 2262/PS/2016 pending before the learned Judicial Magistrate First Class (24th Court), Borivali, Mumbai, arising out of C.R.No. 340 of 2015 registered against them and other accused persons at Malad Police Station, Mumbai, for offences punishable under Sections 294, 114, 34 of the Indian Penal Code, 1860 read with Sections 33(A) and 33(1)(w) of the Maharashtra Police Act, 1951.

2) The FIR came to be registered against Petitioners and other accused persons on 15th July 2015, with an allegation that obscene dances were being performed by female in a Bar managed by Niteshkumar Khirodhar Yadav, wherein Petitioners were present as 'customers' while the raid was conducted by the police.

3) According to Petitioners, even if the contents of the FIR and the charge-sheet submitted pursuant to investigation are perused, no role is attributable to Petitioners, attracting the offences punishable under Sections 294, 114, 34 of the Indian Penal Code, 1860 read with Sections 33(A) and 33(1)(w) of the Maharashtra Police Act, 1951. Learned Advocate for Petitioners reiterated the contention that, there were no specific allegations against Petitioners and that the material brought on record, even if accepted to be true, does not make out any offence against Petitioners. On this basis, it was submitted that when the ingredients of the

alleged offences were not made out, there was no question of Petitioners being made to face the trial. It is for these reasons that Petitioners seek to invoke extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India and inherent jurisdiction under Section 482 of Criminal Procedure Code, for quashing of the said case as against them.

4) The learned Advocate for Petitioners has relied upon the following Judgments of this Court to buttress his submissions :-

- (i) *Rushabh Mehta V/s. State of Maharashtra judgment delivered in Criminal Writ Petition (St) No.4799 of 2020.*
- (ii) *Manish Rughwani V/s. State of Maharashtra reported in 2024 SCC OnLine Bom 2343.*
- (iii) *Nirav Raval V/s. State of Maharashtra reported in 2024 SCC OnLine Bom 2339.*

5) On the other hand, the learned APP representing the State submitted that, the names of Petitioners are clearly mentioned in the FIR and the material collected in the charge-sheet indicates their presence at the spot of incident i.e. the Bar, where the alleged crime was committed. Therefore the Petition deserves to be dismissed, and the charge-sheet cannot be quashed at this stage.

6) We have heard the learned Advocate for the rival parties, and have perused the FIR and the charge-sheet.

7) It is necessary to examine the specific contention raised on behalf of Petitioners that there are no allegations against Petitioners demonstrating that the ingredients of the alleged offences could be said to

be present against the Petitioners. The Petitioners are alleged to have committed offences under Sections 294, 114, 34 of the Indian Penal Code, read with Sections 33(A) and 33(1)(w) of Maharashtra Police Act.

8) Perusal of the above quoted provisions would clearly indicate that, for attracting offence under the Act, a person against whom the offence is alleged is said to have indulged in any obscene act at a public place. A perusal of the material on record shows that, no such allegations are made specifically against the Petitioners. Considering the allegation made in the FIR and charge-sheet, in our view, Section 294, 114, 34 of the Indian Penal Code read with Sections 33(A) and 33(1)(w) of Maharashtra Police Act would not be attracted to the Petitioners who are alleged to be the persons present in the said restaurant/bar, as customers. As regards Section 294 of IPC, there is no allegation in the FIR that, the Petitioners were doing any obscene act, singing, reciting or uttering any obscene song, ballad or words, in or near any public place. Moreover, there is no allegation that the Petitioners had touched any woman in the said bar, where the raid was conducted. Hence, in our opinion, as regards the provisions of Section 294 of IPC, mere mentioning name of Petitioners in the FIR and the charge-sheet would not suffice. There is lack of material to indicate that the ingredients of the offences alleged under the said Act are present against Petitioners in the entire charge-sheet.

9) So also Sections 33(A) of the Maharashtra Police Act, deals

with prohibition of performance of dance in eating house, permit room or beer bar. This section admittedly does not apply qua the Petitioners who are not the owners of the bar nor were they performing dance. And also Section 33(1)(w) of the Maharashtra Police Act, which deals with controlling public places in order to prevent annoyance, risk, damage to the residents of the vicinity. The petitioners were not the manager or staff of the Bar, therefore this Section would also not be attracted, qua the Petitioners. The allegation as far as the Petitioners are concerned is that they were present at the spot as 'customers' where the alleged incident occurred. Therefore, the charging sections against the Petitioners is Section 114 and 34 of IPC. The said Section 114 of IPC deals with any person who is an abettor, when an offence is committed. So also, Section 34 deals with an act done by several persons with a common intention. In our view, the Petitioners cannot be called as abettors, as there is no allegations in the FIR that the Petitioners were showering money/currency on females who were allegedly performing obscene dance. So also, there is no evidence to show that the Petitioners were instigating the female to perform obscene dance and/or songs.

10) Petitioner's Advocate has relied upon few Judgments passed by Division Bench of this Court. In all these judgments it was alleged that Petitioners/customers had visited the Bar where the police had conducted raid. It is held that, the offences punishable under Sections 294, 114, 34 of

the Indian Penal Code read with Sections 33(a) and 33(w) of Maharashtra Police Act would not be attracted as the Petitioners therein were customers and hence in all those cases the writ petitions were allowed and the FIR/charge-sheets were quashed. We are agreeable with the view taken by the Division Bench of this Court in the above Judgments.

11) In the case of *State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335* the Hon'ble Supreme Court had laid down certain tests to verify as to whether accused persons need to be made to face a trial or the FIR can be quashed. A perusal of the above quoted paragraph would show that the case of Petitioners is covered in the first three clauses thereof, as no case is made out against Petitioners about the alleged offences, even if the FIR and other material on record is accepted. The names of Petitioners are merely mentioned in the FIR and in the Panchnama as customers and therefore, the Petition deserves to be allowed.

12) In view of the above, the Writ Petition is allowed in terms of prayer clause (a) & (b).

12.1) The Criminal Case bearing No. 2262/PS/2016 pending before the learned Additional Chief Judicial Magistrate First Class (24th Court), Borivali, Mumbai, qua Petitioners is quashed.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)