



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1172 OF 2025**

Raj Jiten Chheda	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Sunny A. Waskar, for Applicant.
Mr.P.P.Malshe, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 7 NOVEMBER 2025

ORDER :

1. Heard the learned Counsel for the parties.
2. This application under Section 482 of the Code of Criminal Procedure, 1973, is preferred to quash and set aside the chargesheet in CC No.2528/PW/2024 arising out of C.R.No.223 of 2024 for the offences punishable under Section 188 read with Section 34 of the Indian Penal Code, 1860, and Sections 3, 8(1), 8(2) and 8(4) of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 (the Act, 2016).
3. Pursuant to a secret information, Chembur police conducted a raid at Surabhi Palace Bar and Restaurant, on the night intervening 4th and 5th May 2024 at about 0.30 hours. In the said raid, the police apprehended 11 persons, including the Manager of the said restaurant, orchestra artists and

customers. The Applicant was allegedly one of the customers at the said establishment when the victims were allegedly performing obscene dance. It was alleged that the applicant along with another customer had abetted the commission of the offence punishable under Section 188 of the Penal Code and Sections 3, 8(1), 8(2) and 8(4) of the Act, 2016. The police drew panchanama and, post completion of investigation, chargesheet came to be lodged for the aforesaid offences.

4. The applicant has preferred this application with the assertion that, prima facie, no offence punishable under Section 188 of the Penal Code and Sections 3, 8(1), 8(2) and 8(4) of the Act, 2016 is made out qua the applicant. Even if the report under Section 173 of the Code and the documents annexed with it, are taken at their face value, no offence, as alleged, can be said to have been committed by the applicant. There is no material to indicate that the applicant had disobeyed any order promulgated by a Public Servant. Nor the applicant has behaved in an indecent manner or otherwise abetted the commission of the alleged offences. Thus, the prosecution of the applicant constitutes an abuse of the process of the Court.

5. I have heard Mr. Sunny Waskar, learned Counsel for the Applicant, and Mr. Malshe, learned APP for the State, at some length. With the assistance of the learned Counsel for the parties, I have perused the report under Section 173 of the Code and the documents annexed with it.

6. Mr. Waskar, learned Counsel for the Applicant, submitted that the only reference in the FIR to the applicant is that the applicant was one of the customers who were present at the time of the alleged obscene performance in the aforesaid establishment. It is not alleged that the applicant was showering any currency notes on the alleged victims, or otherwise misbehaved with the women working at the said establishment. The Panchanama dated 4 May 2024 also simply records the fact that the Petitioner along with another customer was encouraging the women to render obscene dance performance. In the absence of any other material, the prosecution of the applicant for the aforesaid offences is clearly an abuse of the process of the Court. Therefore, the prosecution deserves to be quashed qua the applicant.

7. Mr. Waskar further submitted that this Court in a series of judgments, has taken a consistent view that the mere presence of a person in the establishment where the dance performance is rendered, would not constitute either disobedience of the lawful orders of the public servant, or, the commission of offences punishable under Sections, 3, 8(1), 8(2) and 8(4) of the Act, 2016. Reliance was placed on the judgments and orders of this Court in the cases of **Rushabh Minishkumar Mehta and Anr. V/s. State of Maharashtra¹**, **Akash R. Katla and Ors. V/s. The State of Maharashtra²**,

1 Cri.WP(ST) No.4799 of 2020 dt. 14 Jan. 2021

2 Cri.WP No.1291 of 2024 dt. 16 Apr. 2024

and, **Nirav Raval and Ors. V/s. The State of Maharashtra and Anr.**³

8. In opposition to this, Mr. Malshe, learned APP would urge that, the material on record clearly indicates that the applicant was present at the time the obscene dance performance was being rendered at the establishment. FIR and the contents of the scene of occurrence panchanama indicate that the applicant was encouraging such performance by the victims. In these circumstances, it cannot be said that there is no material to make out a prima facie case against the applicant. Therefore, the application is liable to be dismissed.

9. From the perusal of the report lodged by Rashmi Halankar, the then Police Constable, it becomes explicitly clear that the women were allegedly found rendering dance performance at the instance of the owner and manager of the establishment, and the applicant and another person were encouraging the dance performance in the capacity of the customers. Apart from an assertion that the applicant and another customer were encouraging the victims to dance, there is no material to attribute any overt act to the applicant. The panchanama of the scene of occurrence also simply records that the applicant and another customer were present in the said establishment and were encouraging dancers.

10. In the face of the aforesaid nature of the indictment against the

³ Cri.WP No.1708 of 2024 dt. 12 July 2024

applicant, it appears that no prima facie case for the offence punishable under Section 188 of the Penal Code, is made out. It could not be demonstrated that any public servant had promulgated any order thereby directing persons to abstain from a certain act or to take certain order with certain property in his possession or under his management, and the applicant had disobeyed any such direction. Ex-facie, the provisions contained in Section 188 of the Penal Code, are not attracted.

11. To add to this, there is no allegation of any overt act on the part of the applicant. Nor there is material to indicate that there was either conspiracy, intentional aid or instigation on the part of the applicant so as to constitute an abetment for the commission of the offences for which the applicant and the co-accused have been arraigned.

12. In the case of **Rushabh Minishkumar Mehta (supra)**, a Division Bench of this Court, in an almost identical fact situation, enunciated that as regards the provisions of the Act, 2016, mere mentioning names of the customers in the FIR and the chargesheet would not suffice. In the case of **Akash R. Katla and Ors. (supra)**, another Division Bench of this Court, after adverting to the decision in the case of **Rushabh M. Mehta (supra)**, enunciated the position as under :

“8. In the case of Rushabh Mehta & Anr. (supra), the petitioners therein had challenged the FIR registered for offence under Sections 294, 111 read with 34 of the Indian

Penal Code and Sections 3,8(1),8(2) and 8(4) of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working Therein) Act, 2016. The petitioners therein were present at the place of incident where obscene dance was performed. This Court had observed that for attracting Section 294 of the IPC, the person against whom the offence is alleged should indulge in any obscene act at a public place. No such allegations were attributed to the petitioners therein. Similarly, Section 114 of IPC can be invoked where a person is liable when he is an abettor present when the alleged offence is committed. It was further observed that mere mentioning names of the accused in the FIR and the charge-sheet would not be sufficient to attract penal provisions invoked against them.”

13. In the case of **Nirav Raval and Ors. (supra)**, another Division Bench of this Court observed that, mere presence of the Petitioners at the relevant place and time as customers when two women were allegedly dancing in an obscene manner was not sufficient to attract the offences. The observations in paragraph Nos.6 and 7 read as under :

“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.**⁴ 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.**⁵ and **Rushabh M. Mehta and anr. Vs. State of Maharashtra**⁶. The decision in Manish Parshottam Rughwani (supra) is clearly applicable to the case in hand.”

14. The aforesaid pronouncements appear to be on all four with the facts of the case at hand. Apart from the allegation that the applicant was one of the customers when the alleged raid was conducted, there is not an iota of material to show either the disobedience of the orders promulgated by the

4 Cri.WP (ST) No.4343 of 2024 dt. 5 April 2024

5 Cri.WP No.4603 of 2021 dt. 6 Sept. 2022

6 Cri.WP (ST) No.4799 of 2020 dt. 14 Jan. 2021

public servant or abettment of the alleged obscene dance performances.

15. In the aforesaid view of the matter, the first proposition in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.**⁷, wherein the Supreme Court has illustratively indicated that, the power to quash the criminal prosecution can be exercised where the allegations made in the FIR or a complaint, even if they are taken at their face value, and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, applies to the facts of the case.

16. Resultantly, the continuation of the prosecution appears to be an abuse of the process of the Court. I am, therefore, inclined to allow the application.

17. Hence, the following order :

ORDER

(i) Criminal Application stands allowed in terms of prayer clause (a) qua the Applicant.

(ii) Criminal Case No.CC/2528/PW/2024 arising out of C.R.No.223 of 2024 for the offences punishable under Section 188 read with Section 34 of the Indian Penal Code and Sections 3, 8(1), 8(2) and 8(4) of the Act, 2016 stands quashed and set aside qua the Applicant only.

(ii) No costs.

(N.J.JAMADAR, J.)

⁷ 1992 Supp (1) SCC 335