



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLN. (APL) NO. 1125 OF 2024

APPLICANT :

Yash s/o Manoj Joshi, Age 27 years, Occ:
Service, R/o Opposite Inox Punam Mall,
Qtr. No.66, EWS Colony, Hiwari Nagar,
Bagadganj, Nagpur, Pin Code-440008.

-Versus-

- NON-APPLICANTS :
1. State of Maharashtra, through Police Station Kotwali, Nagpur.
 2. Khushal s/o Vasudevrao Tijare, Age 61 years, Occ: Service, R/a Police Station Kotwali, Nagpur, Kotwali, Nagpur.

Mr. S.M.Mate, Adv. for the applicant.
Mr.J. Y. Ghurde, APP for non-applicants-State.

**CORAM: SMT. M. S. JAWALKAR &
RAJ D. WAKODE, JJ.**

**CLOSED ON : 30TH SEPTEMBER, 2025
PRONOUNCED ON: 15TH OCTOBER, 2025**

J U D G M E N T (Per : Smt. M. S. Jawalkar, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with

the consent of the learned counsel for the parties. Though non-applicant No.2 is served, none appears.

3. By this application, the applicant prays for quashing and setting aside the First Information Report (FIR) bearing Crime No.3166/2016, dated 19/03/2016 and charge-sheet No.247/2016, registered for the offences punishable under Section 43 of the Juvenile Justice Act, 1986.

4. The applicant submits that the prosecution alleges in the FIR that on 19/03/2016, non-applicant No.2, a Police Inspector, acting on an anonymous tip visited the premises of one Keshav Urkande, where the landlord had rented a room to the applicant and others for study purposes. It is alleged that in the said room, the applicant along with four others was found smoking hookah and certain material, including tobacco, were seized. On this basis, FIR bearing Crime No.3166/2016, dated 19/03/2016 was registered under Section 43 of the Juvenile Justice Act, 1986, and Charge-sheet No.247/2016 dated 19/04/2016 was filed.

5. The applicant contended that the FIR is false, frivolous, and motivated, with vague and unsupported allegations. Even assuming them to be true, no offence under Section 43 of the Juvenile Justice Act, 1986 can be made out, since the Act stood repealed on

30/12/2000 with coming into force of the Juvenile Justice (Care and Protection of Children) Act, 2000. The registration of an FIR in 2016 under a repealed law is *ex facie* illegal.

6. The applicant submitted that his date of birth is 12/08/1997 and he had attained the age of 18 years on the date of registration of the FIR. As Juvenile Justice Legislation applies only to children/ juveniles, invoking its provisions against the applicant is wholly misconceived.

7. The applicant contended that a bare reading of the FIR discloses no specific act or omission attributable to the applicant. The allegations are sweeping and vague, clearly showing false implication at the behest of non-applicant No.2 with *mala fide* intent. Continuation of such proceedings lacks legal foundation, amounts to abuse of process of law, and would cause gross miscarriage of justice.

8. The counsel for the applicant placed reliance upon the following citations:

- (i) **Special Leave Petition (Criminal) No.5290/2024** (*Rajnish Kumar Biswakarma v. State of NCT of Delhi & anr.*)
- (ii) **State of Punjab and others v. Bhajan Kaur and others, (2008) 12 SCC 112.**
- (iii) **Vishwanath Tukaram Ghorpade v. State of Maharashtra, 2016 SCC OnLine Bom 5626.**

- (iv) **CRM-M-35747-2024** (*Jasmeet Kaur and another v. State of Punjab and another*).
- (v) **Rashmi Sarang @ Smt.Rashmi v. Police Inspector by Thalaghattapura Police Station by State Public Prosecutor, High Court of Karnataka and another, 2025 SCC OnLine Kar 11283.**

9. The non-applicant No.1 contended that the applicant had rented a room and turned it into a hookah parlour for personal gain, where minor students were provided intoxicating substances and encouraged to supply them outside. Acting on an anonymous tip, non-applicant No.2 seized the incriminating material and lodged the complaint, leading to FIR bearing Crime No.3166/2016.

10. The non-applicant No.1 submitted that investigation was duly conducted, recorded the statements of witnesses and charge-sheet No.247/2016 dated 19/04/2016 filed before the Competent Court. The allegations disclosed a clear *prima facie* case, and the plea of false implication is a matter of defence to be considered at trial. Hence, the prayer for quashing is not maintainable.

11. Furthermore, it is submitted by non-applicant No.1 that the investigating officer recorded statements of the complainant, police staff, and landlord, all of whom confirmed the applicant's involvement in the crime. Spot and seizure panchnamas also show recovery of hookah pots, tobacco substances, cash, and other articles.

12. It is also contended by the non-applicants that the birth certificates of other co-accused proved that they were minors. Though the applicant claims to be above 18 years, he has not produced any valid birth certificate, and there his defence is to be examined at the trial.

13. It is also submitted by non-applicants that the chemical analysis report confirmed the presence of nicotine in the seized substance and the offence is also covered under the provisions of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, as hookah tobacco falls under its Schedule. The non-applicants submitted that there is a strong *prima facie* case made out against the applicant and the application is liable to be rejected.

14. The learned APP in support of his contentions, placed reliance on **T. Barai v. Henry Ah Hoe and another, (1983) 1 SCC 177.**

15. Heard the learned counsel for the parties and considered the citations relied on by both the parties.

16. The main contention of the applicant is that the FIR was registered under the provisions of old Juvenile Justice Act, 1986,

wherein there is no reference of 'tobacco' or 'tobacco product'. For the sake of convenience, section 43 of the Juvenile Justice Act, 1986 is reproduced as under:

“43. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a juvenile.— Whoever gives, or causes to be given, to any juvenile any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of a duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.”

17. In this connection, it is pertinent to note that the applicant was directed to place on record the charge framed by the learned Magistrate. Along with pursis dated 25/09/2025, he filed certified copy of application for discharging the accused person dated 21/05/2019 along with order passed thereon dated 13/12/2019. He also produced on record a copy of charge framed by Judicial Magistrate First Class, Court No.8, Nagpur and also plea of the accused recorded thereunder on 13/12/2019. The Court has rightly framed charge under section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. For the sake of convenience, section 77 of the Act of 2015 is reproduced as under:

“77. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child.— Whoever

gives, or causes to be given, to any child any substance, except on the order of a duly qualified medical practitioner, shall intoxicating liquor or any narcotic drug or tobacco products or psychotropic be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

This clause provides that whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees or both. (*Notes on Clauses*)."

The section shows that not only liquor, narcotic drugs, but also tobacco products are included in the list of prohibitory material to be given to any child.

18. The learned counsel for the applicant relied on judgment in **Special Leave Petition (Criminal) No.5290/2024** (*supra*) in support of his contention that FIR can be quashed at any stage and only because it has not been challenged at the inception, on that ground the application cannot be rejected. There is no dispute over the proposition laid down in this special leave petition. However, whether there is any material to quash the FIR is required to be seen. The learned counsel for the applicant also placed reliance on **State of Punjab and others v. Bhajan Kaur and others** (*supra*). However, the

reliance is misplaced. The issue before the Hon'ble Apex Court was whether a Statute is presumed to be prospective unless held to be retrospective either expressly or by necessary implication. The Hon'ble Apex Court held that a substantive law is presumed to be prospective. It is one of the facets of the rule of law. Hence, there was no question of any pending litigation in connection with the old Act. In fact, the charge-sheet filed by the Police Authorities refers to tobacco and tobacco products being given to the minors through *hookah*. As such, what is the offence committed is in fact covered by section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 of which due care has been taken by the learned Judicial Magistrate First Class. The learned counsel for the applicant placed reliance on **Vishwanath Tukaram Ghorpade v. State of Maharashtra** (*supra*). However, this citation is also of no avail, as in the said citation offence under sections 39 and 44 of the Electricity Act, 1910 was registered on 30/07/2003. After repeal of the said Act of Electricity Act, 1910 was held to be illegal, in view of the provisions of section 151 of the Electricity Act, 2003. In the present matter, the learned Magistrate duly considered the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 while framing the charges. The application for discharge is also rejected. It is a mistake on the part of Police Authorities while applying the section. Though there was a

mention in the FIR that some products having tobacco and other substance were given to the children, which are prohibited as per section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. However, it is an offence registered under section 43 of the Act of 1986, wherein there is no reference of tobacco. Therefore, the Magistrate is right in framing charge under section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which is applicable, as offence is alleged to have been committed on 19/03/2016.

19. The learned counsel for the applicant also relied on the judgment in **Jasmeet Kaur and another v. State of Punjab and another** (*supra*). However, the facts involved are different. In the said matter, Punjab and Haryana High Court considered the effect of repealing of Statute, which means to obliterate it has completely from the records of Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which commenced, prosecuted and concluded whilst it was an existing law. It is held that the FIR which was registered on 17/07/2024 under section 406 of IPC, specifically when BNSS, 2023 was very much in existence. It would have been a different case that if FIR was lodged prior to 2023, it would have treated as legal and

valid. But as soon as new Act came into force, the FIR ought to have registered as per the provisions of BNSS 2023.

20. The learned counsel for the applicant also placed reliance on **Rashmi Sarang @ Smt.Rashmi v. Police Inspector by Thalaghattapura Police Station by State Public Prosecutor, High Court of Karnataka and another** (*supra*), wherein the Karnataka High Court dealing with the issue of registration of FIR under sections 41 and 42 of the Juvenile Justice Act, 1986, which was repealed by the Act of 2000 and subsequently by the Act of 2015. The Additional Chief Judicial Magistrate, Bengaluru framed charges under sections 41 and 42 of the Act of 1986 as well as under sections 74(1) and 85 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Karnataka High Court held that the registration of FIR was under repealed Act and sections 74(1) and 85 of the Juvenile Justice (Care and Protection of Children) Act, 2015 are not applicable, proceedings against the petitioner is an abuse of process of law. Therefore, the entire proceedings were quashed and set aside.

21. The learned APP relied on **T. Barai v. Henry Ah Hoe and another** (*supra*) to explain the effect of repeal. The Hon'ble Apex Court held in para-18 as under:

“18. Whenever there is a repeal of an enactment, the

consequences laid down in Section 6 of the General Clauses Act though it has been specifically mentioned in the repealing Act or not, will follow, unless, as the section itself says, a different intention appears. In *State of Punjab v. Mohar Singh*, this Court has elaborately dealt with the effect of repeal. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. "The line of inquiry would be, not whether the new Act expressly keeps alive old rights and liabilities", in the words of Mukherjea. J., "but whether it manifests an intention to destroy them." The Court held that it cannot subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Act and the mere absence of a saving clause is not by itself material. The Court therefore held that the provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the General Clauses Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute which is of a temporary nature automatically expires by efflux of time. The principles laid down by the Court in *Mohar Singh* case, have consistently been followed in subsequent cases. The old doctrine of extinguishing or

effacing the repealed law for all purposes and intents except for the acts past and closed has now given way to the principles enunciated by the Court in *Mohar Singh* case.”

22. In our considered opinion, the Court has ample power under section 216 of the Code of Criminal Procedure/section 239 of BNSS to alter or add to any charge at any time before judgment is pronounced. Only condition which is mentioned in section 216 of the Code of Criminal Procedure/section 239 of BNSS is that every such alteration or addition shall be read and explained to the accused. On perusal of the charge framed by the learned Judicial Magistrate First Class, Court No.8, Nagpur, one can see that the contents in the FIR are taken into consideration and the existing law is made applicable to the offence. When the offence was committed, the Juvenile Justice (Care and Protection of Children) Act, 2015 was in existence. Merely on this technical ground the charge-sheet or criminal proceedings cannot be quashed or set aside. In view of this matter, we do not see any reason to interfere in the trial already commenced. As such, the application stands dismissed.

23. Rule stands discharged.

(RAJ D. WAKODE, J)

(SMT. M. S. JAWALKAR, J)