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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3007 OF 2024

Mr. Joel Mark Francis D'Souza ... Petitioner

Versus.

The State of Maharashtra ... Respondent

Mr. Tanmay Jadhav a/w Mr. Amey Ajgaonkar, Mr. Anil Karkande &
Mr. Ajinkya Ganage, Advocates for Petitioner.

Mrs. Rajeshree Newton, APP for the Respondent – State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 10th JUNE, 2026

P.C. :

1. This Petition was circulated pursuant to the praecipe dated 10.06.2026, same is taken on record and marked 'X' for identification. At the request of Mr. Tanmay Jadhav learned Advocate for the Petitioner, this Petition was ordered to be listed on the 'Production List'.

2. Heard Mr. Tanmay Jadhav, learned Advocate for the Petitioner, and Mrs. Rajeshree Newton, learned APP for the

Respondent – State.

3. By the present Petition, the Petitioner seeks to quash and set aside the FIR bearing C.R. No. 57 of 2018 (“Impugned FIR”), dated 01.02.2018, registered with Andheri Police Station, Mumbai, for offences punishable under Sections 294, 114 r/w 34 of the Indian Penal Code (“IPC”) and Section 131(a) of the Maharashtra Police Act, and the Charge-sheet registered as PS/0001500/2018, pending before the Judicial Magistrate First Class, Andheri (“Magistrate”).

4. The allegations in the impugned FIR and the material collected indicate that on 01.02.2018, the SSB of Mumbai Police Station received secret information/tip-off about objectionable activities at an establishment. Based on this information, the police conducted a raid at “Shrirambhavan Restaurant and Bar”, Shriram House, Parsi Panchayat Road, Andheri (East), Mumbai. Approximately 30 male customers and 12 women were apprehended. The Petitioner is alleged to have been one of the “customers”, present at “Shrirambhavan Restaurant” where the victims reportedly performed song and dance.

5. Mr. Tanmay Jadhav, learned Advocate for the Petitioner, submits that apart from referring to the Petitioner as a “customer”, there is no other material or assertion of whatsoever nature in the impugned FIR to make out the case as against the Petitioner for the offences, which are charged. He submits that there is no material to indicate that the Petitioner behaved in any indecent manner or otherwise abetted the alleged crime. He therefore argues that prosecuting the Petitioner would amount to an abuse of legal process.

6. Mrs. Rajeshree Newton, learned APP for the State - Respondent, submits that the allegation against the Petitioner in the present crime is that he was present at the “Shrirambhavan Restaurant” as a “customer”.

7. Perused records with the assistance of the learned Advocates appearing for the parties.

8. There are no allegations against the Petitioner of engaging in any obscene acts at “Shrirambhavan Restaurant”. No

specific overt acts are attributed to the Petitioner. The Petitioner's presence at "Shrirambhavan Restaurant" is as a "customer".

9. In the case of ***Raj Jiten Chheda v/s. The State of Maharashtra***¹, the facts before this Court involved Petitioners, identified as "customers," who were present at the scene of an incident involving an obscene dance. This Court, after examining various other decisions, observed in paragraph nos. 11 to 13 as follows :-

"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*

1. Criminal Application No. 1172 of 2025 decided on 07.11.2025.

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.**² 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 this Court in the case of **Jitendra R. Kamat Vs. The State of Maharashtra and anr.**³ and **Rushabh M. Mehta and anr. Vs. State of Maharashtra**⁴. The decision in **Manish Parshottam Rughwani (supra)** is clearly applicable to the case in hand."*

10. The case of **Raj Jiten Chheda (supra)** clearly applies to the present case. **Raj Jiten Chheda** was followed in the case of **Anand Arunkumar Bhatt Vs. State of Maharashtra**⁵. There is no material in the impugned FIR and charge sheet that would be sufficient to attract the penal provisions invoked against the Petitioner.

2. Criminal Writ Petition (St) No. 4343 of 2024 decided on 05.04.2024.

3. Criminal Writ Petition No. 4603 of 2021 decided on 06.09.2022.

4. Criminal Writ Petition (St) No. 4799 of 2020 decided on 14.01.2021.

5 Writ Petition No. 1208 of 2024

11. Relying on the principles laid down by the Hon'ble Supreme Court in the case of *State of Haryana and Others v/s. Bhajan Lal and Others*⁶, this would be a fit case to exercise powers under Section 528 of the BNSS to prevent abuse of justice.

12. In view of the above, Criminal Writ Petition is allowed in terms of prayer clause (a). Consequently, the impugned FIR bearing C. R. No.57 of 2018 and the Charge-sheet arising out of the impugned FIR are quashed qua the Petitioner. Criminal proceedings bearing PS/0001500/2018, pending before the Judicial Magistrate First Class, Andheri against the Petitioner arising out of the impugned FIR are closed.

13. Criminal Writ Petition No. 3007 of 2024 is disposed of. No order as to costs.

(ASHWIN D. BHOBE, J.)

6. 1992 Supp (1) Supreme Court Cases 335.