



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

APPLICATION NO. 1032 OF 2022

Nilesh N. Gadge ...Applicant
Versus
State of Maharashtra & Anr. ...Respondents

Mr. Shailesh Kharat for the Applicant.
Ms S.E. Phad, APP for the Respondent/State.

**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 21.03.2024.

PC:-

1. The applicant is charge-sheeted for the offences under Sections 294, 114 read with 34 of the Indian Penal Code and Section 33 (W) of Maharashtra Police Act. The said proceedings are arising out of First Information Report (FIR) dated 03.01.2016 registered with Tardeo Police Station vide C.R. No.4 of 2016.

2. The case of the prosecution is that on 2.1.2016, the police received information and decided to conduct raid. The information was that some bar dancers were performing indecent dance at Indiana Bar & Restaurant situated at Haji Ali, Mumbai and the persons present at the place of offence were participating, aiding and abetting them. Pursuant to the information, the police raided the premises and found that the ladies were performing indecent dance and several other persons including staff of the restaurant and customers who

were present at the scene of offence were supporting them. Some of the customers were throwing money in response to the performance of dance.

3. Learned Advocate for the applicant submitted that at the most the presence of applicant is established at the scene of offence. Mere presence at the place where dance was performed does not amount to aiding and abetting the commission of offence. The customers cannot be impleaded as accused in the present FIR. About 39 persons were impleaded as accused including 20 customers. The applicant is one of the customer. No *overt-act* is attributed to the applicant.

4. Reliance is placed on the decisions of this Court in case of ***Jitendra R. Kamat vs. The State of Maharashtra and anr¹*** and ***Rushabh M. Mehta and anr. Vs. State of Maharashtra²***.

5. Learned APP submitted that the applicant was present at the scene of offence. He had aided and abetted the persons who were performing obscene and indecent dance. The dance was performed by woman. The applicant was throwing money in response to the dance performance.

6. We have perused the FIR and charge-sheet. The applicant's name is reflected in FIR as one of the customer who was present at the hotel where raid was conducted. No specific

1 Criminal Writ Petition No.4603 of 2021 decided on 6.9.2022

2 Criminal Writ Petition (St) N. 4799 of 2020 decided on 14.1.2021

overt-act is attributed to him. Neither the applicant concerned with the dance performances nor connected with the hotel where the dance was performed.

7. In case of *Jitendera Kamat (supra)*, Section 294 of the IPC was invoked along with other provisions. The factual matrix of the said case would indicate that the accused therein was present at the spot when the ladies were dancing in obscene manner. This Court held that no specific allegations were made against him. Nor any specific role was attributed to the accused. He was present at the place where raid was conducted. Relying upon the decision of the Apex Court in ***State of Haryana and ors vs. Bhajan Lal and ors.***³, the proceedings were quashed.

8. Similarly, in case of *Rushabh M. Mehta and anr. (supra)*, this Court was dealing with similar proceedings wherein the customer was present at the place where indecent dance was performed, was impleaded as accused. This Court held that mere mentioning the name of accused in the FIR and the charge-sheet would not suffice and there is lack of material to indicate that the ingredients of the offences alleged under the said Act were existing, the proceedings were quashed.

9. Applying the ratio in the aforesaid decisions to the factual matrix of the case is the same, that the FIR indicates the presence of the applicant at the place of incident. No specific *overt-act* has been attributed to the applicant. In absence of

³ 1992 Supp.(1) Supreme Court Cases 335

any cogent evidence, the applicant cannot be prosecuted for the said offences.

ORDER

A] Criminal Application is allowed.

B. The impugned FIR dated 3.1.2016 registered with Tardeo Police Station viz. C.R.No. 4 of 2016 *qua* the applicant is quashed and set aside.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)