
(2010) 05 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3785 of 2010

Ameer Basha

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 31-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Hyderabad City Police Act, 1348 — Section 21, 76
Penal Code, 1860 (IPC) — Section 109, 294

Citation : (2011) 2 ALD(Cri) 268

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : G.L. Narasimha Rao and Associates, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—The petitioner/1st accused (A-1) is accused of offences punishable under Sections 294, 109 I.P.C. and Section 21/ 76 of the Hyderabad City Police Act along with 7 others in C.C. No. 451 of 2006 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad. After a lapse of 4 years, the petitioner seeks quashing of proceedings in C.C. No. 451 of 2006 u/s 482 Cr.P.C.

2. The petitioner/A-1 is owner of Night King Bar and Restaurant located at Himayat Nagar, Hyderabad. A-2 to A-8 are dancers who were stated to be dancing to the tune of music in indecent manner by exposing their body in A-1's restaurant on 15.09.2004 at about 00.10 hrs. The Sub Inspector of Police, Narayanaguda Police Station along with one head constable, three police constables and two panch witnesses went into the restaurant and observed the same under the cover of observation panchanama. It is alleged that A-2 to A-8 apart from dancing to the tune of music in indecent manner by exposing their body, were moving around the tables of customers who were in intoxicated

condition and were collecting tips from them by passing indecent gestures. It is further alleged that A-1 who was running the show in his bar and restaurant, ran away from the spot on seeing the police party.

3. Sheet anchor of the petitioner's contention is based on *Seemadass v. State of Andhra Pradesh* un-reported order dated 12.03.2010 of this Court in Crl.P. No. 2355 of 2003 wherein this Court basing on Division Bench decision of the Bombay High Court in *Narendra H. Khurana v. The Commissioner of Police* 2004 Cri.L.J. 3394 and another un-reported decisions of this Court in Crl.P. No. 4377 of 2005 dated 30.09.2005 and Crl.P. No. 4931 of 2005 dated 28.10.2005, quashed criminal case relating to offence punishable u/s 294 and 109 I.P.C. It is contended by the petitioner's counsel that in order to attract offence u/s 294 I.P.C. the prosecution has to prove that the activity of the accused was "to the annoyance of others" and that there is no allegation in the charge sheet that such indecent dancing and activity inside bar and restaurant of A-1 was causing any annoyance to any other person. It is well settled principle of law that a bar and restaurant is a public place, even though entry into it is limited to the customers who paid entry fees as well as payment for the items consumed. The above allegations in the charge sheet prima facie disclosed obscene acts in a public place which is A-1's bar and restaurant. The only question left out is whether there is any evidence as to whether the said obscene activity was to the annoyance of others. This question has to be considered and answered in broader perspective and not limited to the customers who were sitting in that bar and restaurant. It may be a fact that only such people who intend to see such indecent activity will go there and derive pleasure or enjoyment by looking at such obscene activity. Normally, persons who do not like to see such indecent activity in public places, may not enter into such bars and restaurants where such activity is going on. I am of the considered opinion that the phrase "to the annoyance of others" occurring in Section 294 I.P.C. has to be interpreted objectively with reference to general public and not subjectively with reference to the persons sitting and viewing the same in that bar and restaurant where obscene activity was going on. That is the reason why Section 294 I.P.C. does not say that it should be to the annoyance of persons who are within the precincts of the activity. Section 294 I.P.C. speaks of "to the annoyance of others" thereby meaning that such activity was to the annoyance of others who are not within the precincts or premises of the activity. This aspect of the matter was not considered previously either by this Court or in the above reported decision of the Bombay High Court.

4. Further, it is contended by the Additional Public Prosecutor that the police officers who raided the premises of bar and restaurant felt the activity to be annoyance to them and to the panch witnesses who are taken with them in that raid. On report given by the Sub-Inspector of police who headed the raid party, another Sub-Inspector of Police, Narayanguda Police Station registered the same as case in Crime No. 651 of 2004 and investigated into the offence. During the course of investigation, the investigating officer examined the police officers and

personnel in the raid party and recorded their statements. Views of panch witnesses are noted in the observation panchanama. The petitioner's counsel did not file copies of statements of witnesses (L.Ws 1 to 5) and observation panchanama of the two panch witnesses, but submitted his arguments on mere allegations in the charge sheet.

5. At this stage, it may be noted that the Bombay High Court in the above reported decision while holding that in the circumstances though Section 294 I.P.C. is not attracted, the law enforcement agency has ample power to proceed under different laws, for instance Section 110 of the Bombay Police Act, 1951 or Rules for licensing and Controlling places of public amusement (other than cinema) and performances for public amusement including Melas and Tamashas, 1960 and Rules for places of public entertainment license. In the case on hand, the Narayanaguda Police not only invoked Sections 294 and 109 I.P.C. in the charge sheet, but also invoked Section 21/ 76 of the Hyderabad City Police Act against the accused. It is for the trial Court to consider the evidence to be let in by both the parties and to come to conclusion whether activity of A-2 to A-8 allowed by A-1 in his Night King Bar and Restaurant, Himayat Nagar, Hyderabad attracts Section 294 I.P.C. also. Therefore, I do not find any valid or legal reasons to quash proceedings in this case while exercising powers u/s 482 Cr.P.C.

6. In the result, the petition is dismissed.