
(1998) 04 BOM CK 0025

In the Bombay High Court

Case No : Criminal Writ Petition No. 724 of 1984

Fazal Abdul Hamid Lalani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-04-1998

Acts Referred:

Bombay Cinemas (Regulation) Act, 1953 — Section 108(2), 3, 7

Criminal Procedure Code, 1973 (CrPC) — Section 482

Maharashtra Cinemas (Regulation) Rules, 1966 — Rule 22, 33, 51

Citation : (1998) 4 ALLMR 487 : (1999) 5 BomCR 240 : (1999) BomCR(Cri) 240 : (1998) 2 BOMLR 885

Hon'ble Judges : Smt. Ranjana Desai, J

Bench : Single Bench

Advocate : S.P. Kanuga, for the Appellant; D.N. Salvi, Assistant Public Prosecutor, for the Respondent

Judgement

Smt. Ranjana Desai, J.—The present petition is filed praying for quashing of the process issued in Case No. 2987 /P/84 pending before the Metropolitan Magistrate, 26th Court, Borivali, Bombay.

2. The petitioner was at the relevant time, working as a Manager of Vaibhav Video Parlour run in the premises of Vaibhav Snack Bar at Dahisar (East), Bombay. According to the petitioner, the said Bar is owned by his brother Ahmed Lalani. The said Bar possessed all requisite licences for an eating house. At the relevant time licences were valid and subsisting.

In the part of the premises of the said Snack Bar, a video parlour was being run. In order to ascertain as to whether the video parlour required a licence under the Bombay Police Act or the Cinemas (Regulation) Act, the petitioner's brother addressed a letter dated 10th February, 1984 to the Assistant Commissioner of Police, Theatre Branch, Bombay. A copy of the said letter is annexed to the petition as Annexure "A". In the said letter, the petitioner's brother has stated that he had paid entertainment duty for the month of February, 1984 for the

exhibition of video film at the said address. In the said letter he had requested for grant of necessary Police Licence for video exhibition. It is also stated that he is ready to pay necessary fees and to abide by all rules and regulations made for the said purpose. By letter dated 10th May, 1984 addressed to Assistant Commissioner of Police, Theatre Branch, Crawford Market, Bombay, the petitioner's brother again requested for permission to exhibit the video cassettes. T.V. programmes.

3. Mr. Kanuga, learned Counsel appearing for the petitioner submitted that by letter dated 22-6-1984 the petitioner's brother was informed by the Commissioner of Police for Greater Bombay that the question whether video is a Cinematograph, is being debated in the High Court and pending decision of High Court is not possible to take any action on his application and that necessary action will be taken after the decision of the Court. The petitioner's brother was informed that he may approach the Regional Officer, Central Board of Censor, State of Maharashtra at 91-B, Walkeshwar Road, Bombay 400 006 for getting Censorship Certificate for video film which he proposed to exhibit. Mr. Kanuga submitted that till date no further communication has been received by his client from the Commissioner of Police, Greater Bombay as to whether any action has been taken on his application. On 9th of December, 1984, the Police Officers of Dahisar Police Station visited the petitioner's place and asked the petitioner to stop the video show. They insisted that the said show should be closed. It appears that Criminal Case No. 2987/P/84 came to be filed in the Court of Metropolitan Magistrate, 26th Court, Borivali, against the petitioner. The petitioner was charged for the offence punishable u/s 3 read with 7 Bombay Cinemas (Regulation) Act, 1953, 108(i)(2) Maha. M.C.R. Act Rule 33(2)-22-51. In the said case, process came to be issued by the learned Magistrate. As stated above, the present petition is filed for quashing the said process.

4. The rule was granted in this petition on 14-12-84 and interim relief in terms of prayer clause (b) was granted i.e. pending the hearing and final disposal of the present petition, the proceedings in the said Case No. 2987/ P/84 were stayed. Till date, the State has not filed any reply denying or disputing the averments made in the petition. Mr. Kanuga, learned Counsel has submitted that the application for licence has been made in the year 1983 and no action has been taken on the same till date. He has also drawn my attention to the fact that the Maharashtra Cinemas (Regulation) Rules, 1966, at the relevant time contained no provision for licence as regards video cinema and the rules in that regard came into force only on 12-1-1987. Therefore, according to him at the relevant time, there was no requirement as such of obtaining a licence for conducting a video parlour and, therefore, no offence can be said to have been committed by the petitioner. In any event, his applications were very much on record and admittedly no action has been taken on the same. Mr. Kanuga submitted that in any event the matter is pending for over a period of 13 years and if at all his client has at most committed a technical breach and in the peculiar facts and circumstances of the case, the process issued deserves to be quashed.

5. I have also heard Mr. Salvi learned A.P.P. for the State. Mr. Salvi has not been able to dispute the submission of Mr. Kanuga that the relevant rules came into existence only on 12-1-1987. It is also an admitted fact that no action has been taken on the pending applications till date. What is more shocking is the fact that no reply has been filed by the State denying or disputing the case of the petitioner. In the peculiar facts and circumstances of the case therefore in my opinion, the process is liable to be quashed.

6. In the result, the process issued in Case No. 2987/P/84 pending before the Metropolitan Magistrate, 26th Court, Borivali, Bombay is quashed. The petition is accordingly disposed of.

7. Petition allowed.