

(2021) 07 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 1831 Of 2021

Kashinath Motiram Chavan @Hash State Of Maharashtra And Others

Date of Decision : 28-07-2021

Acts Referred:

Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons And Video Pirates, Sand Smugglers And Persons Engaged In Black Marketing Of Essential Commodities Act, 1981 — Section 2, 2(a), 2(a)(ii), 2(b), 3, 3(2), 4(3)
Maharashtra Prohibition Act, 1949 — Section 65(e), 81, 93
Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 3, 3(4)
Bombay Prohibition Act, 1949 — Section 65(e)

Citation : (2021) 07 BOM CK 0010

Hon'ble Judges : S.S. Shinde, J; N.J. Jamadar, J

Bench : Division Bench

Advocate : Jayshree Tripathi, J.P. Yagnik

Final Decision : Dismissed

Judgement

Sr. No., "Police

Station", CR No. & Date, U/section, Status

5-1, Jailroad, 1075/2020 Dt. 19/07/20, "65(e) of Maharashtra Prohibition Act, 1949 r/w sec. 188,

269, 290 of IPC, sec. 51(b) of Disaster Management Act,

2005, sec. 3 of the Epidemic Diseases Act, 1897.", Court Pending

5-2, Jailroad, 1175/2020 Dt. 19/08/20, "65(e), 81 of Maharashtra Prohibition Act, 1949", Court Pending

5-3, Jailroad, 1202/2020 Dt. 30/08/20, "65(e), 81 of Maharashtra Prohibition Act, 1949", Court Pending

5-4, Jailroad, 1215/2020 Dt. 09/09/20, "65(e), 81 of Maharashtra Prohibition Act, 1949", Court Pending

5-5,Jailroad,1219/2020 Dt. 12/09/20,"65(e), 81 of Maharashtra Prohibition Act, 1949",Court Pending

5-6,Jailroad,1240/2020 Dt. 30/09/20,"65(e), 81 of Maharashtra Prohibition Act, 1949",Court Pending

the nature or quality of the act but in the degree, potentiality and extent of its reach upon society. The given act by itself may not be determinant of its",,,,

own gravity. It is the propensity and potentiality of the act of disturbing the even tempo of life of the community that renders it prejudicial to the",,,,

maintenance of public order.",,,,

18. It would be contextually relevant Explanation to section 2(a) of the MPDA incorporates a legal fiction as to the adverse to note that the Act",,,,

(extracted above) effect on public order.",,,,

A profitable reference in this context can be made to the judgment",,,,

of the Supreme Court in the case of Harpreet Kaur (Mrs.) Harvinder Singh Bedi v. State Of Maharashtra And Another 3 (1992) 2 SCC 177, wherein",,,,

the connotation of the Explanation was elucidated as under :,,,,

â??28. The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse effect on â??public orderâ??. It provides that if any",,,,

of the activities of a person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or",,,,

alarm or a feeling of insecurity among the general public or any section thereof or a grave or a widespread danger to life or public health, then public",,,,

order shall be deemed to have been adversely affected. Thus, it is the fall-out of the activity of the â??bootleggerâ? which determines whether",,,,

â??public orderâ?? has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing",,,,

with detentions under the Act.â??",,,,

19. Now, it may be apposite to consider the pronouncement in the case of Rashidmiya @ Chhava Ahmedmiya Shaik (Supra). It was a case under the",,,,

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. Section 2(b) of the Gujarat Prevention of Anti-social Activities Act, 1985 which",,,,

defines a â??bootleggerâ? is pari materia section 2(b) of the MPDA Act. Section 3(4) of the Gujarat Prevention of Anti-Social Activities Act, 1985",,,,

reads as under :,,,,

â?|.....

(4) For the purpose of this section, a person shall be deemed to be ""acting in any manner prejudicial to the maintenance of public order"" when such",,,,

person is engaged in or is making preparation for engaging in any activities whether 5 [as a bootlegger or common gambling house paper or and",,,,

person] or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely",,,,

the maintenance of public order.â??",,,,

20. In the context of the aforesaid provisions, the Supreme Court observed as under :",,,,

â??16 â?|â?|â?|â?|â?|..A conjoint reading of Section 2(b) and Section 3(4) with the explanation annexed thereto clearly spells out that in order to clamp",,,,

an order of detention upon a 'boot- legger' under Section 3 of the Act, the detaining authority must not only be satisfied that the person is a bootlegger",,,,

within the meaning of Section 2(b) but also that the activi- ties of the said bootlegger affect adversely or likely to affect adversely the maintenance of",,,,

public order. Reverting to the facts of this case, the vague allegations in the grounds of detention that the detenu is the main member of the gang of",,,,

Abdul Latif Abdul Wahab Shaikh indulging in bootlegging activities and that the detenu is taking active part in such dangerous activities, are not",,,,

sufficient for holding that his activities affected adversely or were likely to affect adversely the maintenance of public order in compliance with sub-",,,,

section 4 of Section 3 of the Act that the activities of the detenu have caused harm, danger or alarm or a feeling of insecurity among the general",,,,

public or any Section thereof or a grave or widespread danger to life, property or public health as per the explanation to Section 3(4).",,,,

17 The offences registered in the above mentioned four cases against the detenu on the ground that he was dealing in liquor have no bearing on the",,,,

question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the",,,,

maintenance of public order.",,,,

18 There is a catena of decisions dealing with the question of 'maintenance of public order'. But we think that it will be sufficient to make reference to",,,,

the following two decisions.",,,,

19 This Court in Ashok Kumar v. Delhi Administration, [1982] SCC 403 has

observed:" ,,,,

It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order." "" ,,,,

20 In a recent decision of this Court in Piyush Kantilal Mehta v. The Commissioner of Police, Ahmedabad City and Anr., Judgments Today 1988 (4)" ,,,,

703 a question similar to one before us arose for consideration. In that case, the allegations in the grounds of detention were that the detenu was a" ,,,,

prohibition bootlegger, that he was indulged into the sale of foreign liquor and that he and his associates indulged in use of force and violence and also" ,,,,

beating innocent citizens by which an atmosphere of fear was created. In that case the detenu was alleged to have been caught red-handed ,,,,

possessing English wines with foreign marks and in the second occasion he was caught while shifting 296 bottles of foreign liquor in an Ambassador ,,,,

car. While dealing with that case, this Court observed as follows:" ,,,,

It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any" ,,,,

bearing on the maintenance of public order. ,,,,

The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have" ,,,,

affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but" ,,,,

merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section" ,,,,

3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order." "" ,,,,

(emphasis supplied) ,,,,

21. From the aforesaid observations, it becomes evident that the Supreme Court, in the facts of the said case, found that the mere fact that the" ,,,,

petitioner therein was dealing in liquor had no bearing on the question of maintenance of public order in the absence of any other material that those ,,,,

activities of the detenu have adversely affected the maintenance of public order. ,,,,

22. The aforesaid pronouncement, in our view, would be of no assistance in a case where the Detaining Authority, based on cogent material, forms an" ,,,,

opinion that the activity of bootlegging was prejudicial to the maintenance of

public order. A useful reference in this context can be made to the,,,,

judgment of the Supreme Court in the case of Kanuji S. Zala Vs. State of Gujarat & Ors. (1999) 4 SCC 514, wherein the aforesaid pronouncements",,,,,

in the case of Rashidmiya @ Chhava Ahmedmiya Shaik (Supra) and Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Anr.",,,,,

1989 Supp (1) SCC 322 were explained. After advertng to the aforesaid pronouncements, the Supreme Court, in the case of Kanuji S. Zala (Supra),,,,,

observed as under :,,,,

â??4 In our opinion there is no substance in this contention. In none of the three cases relied upon by the learned counsel the point whether public,,,,

order can be said to have been disturbed on the ground that the activity of the detenue was harmful to the public health arose for consideration. It,,,,

appears that in those three cases, the detaining authority had not recorded such satisfaction. Moreover, in those cases the detaining authorities had",,,,,

referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public life was disturbed. In this case",,,,,

the detaining authority has specifcally stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that,,,,

locality was harmful to their health. The detaining authority has also stated that the statements of witnesses clearly show that as a result of violence,,,,

resorted to by the petitioner even tempo of the public life was disturbed in those localities for some time. The material on record clearly shows that,,,,

members of the public of those localities had to run away from there or to go inside their houses and close their doors.,,,,,

5 What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a,,,,

reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defned by the Act. It is also well,,,,

settled that whether the material was suffcient or not is not for the courts to decide by applying an objective test as it is a matter of subjective,,,,

satisfaction of the detaining authority. The observation made by this Court in Om Prakash Vs. Commissioner of Police & Ors. - 1988 Supp. (2) SCC,,,,

576 that,,,,

as in Piyush Mehta Case, the materials available on record in the present case are not suffcient and adequate for holding that the alleged prejudicial",,,,,

activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3),,,,

of the Act and as such, the order is liable to be quashed"" are to be understood in the context of the facts of that case.â??",,,,

emphasis supplied),,,,

23. The legal position which, thus, emerges is that while testing the legality of an order of detention passed by the Detaining Authority, by resorting to",,,,

the provisions of section 3 of the MPDA Act, in the case of a bootlegger, what has to be seen is whether there was credible material before the",,,,

Detaining Authority, on the strength of which, an inference is justifiable that the bootlegging activity was causing or calculated to cause any harm,",,,

danger or alarm or a feeling of insecurity, among the general public or a grave or widespread danger to life or public health and thereby adversely",,,,

affected the maintenance of public order as explained under section 2 of the MPDA Act. Indisputably, the sufficiency or otherwise of the material is a",,,,

matter for the subjective satisfaction of the Detaining Authority. Whether the such material existed and the Detaining Authority considered the",,,,

relevant material to arrive at such satisfaction is the remit of judicial review.,,,,

24. On the aforesaid touchstone, reverting to the facts of the case, we find that apart from the numerous cases which were registered against the",,,,

petitioner, the Detaining Authority considered the statements of two witnesses recorded in-camera. The statement of witness â??Aâ?? reveals that",,,,

the petitioner and his associates were carrying a plastic can containing illicit liquor on motor cycles. Children were playing on the road in front of the",,,,

shop of the said witness. There was an accident and one of the children was dashed by one motorcycle. The child suffered a minor injury. The plastic",,,,

can fell off the motorcycle and the illicit liquor spilled on the ground. When the witness remonstrated the driving of the motor cycle in a rash manner,",,,

the petitioner and his associates abused and assaulted the said witness. Alarmed by the assault, the neighbours came thereat. The petitioner",,,,

threatened them on the point of knife. The associates of the petitioner beat those persons by sticks. The people started to run helter-skelter on account",,,,

of the terror created by the petitioner and his associates. Nobody came forward to help the witness. After giving threats of dire consequences and",,,,

robbing him of Rs.1,500/-, the petitioner and his associates decamped. On

account of fear, the witness did not report the matter to police." , , , ,

25. The statement of witness B reveals that the petitioner and his associates accosted and questioned him as to why he was reporting the , , , ,

bootlegging activity of the petitioner to the police. At that time, the petitioner and his associates were armed with sticks and iron rods. When the , , , ,

witness declined to have informed the police, the petitioner abused the witness on the point of knife. The associates of the petitioner beat the witness" , , , ,

and his friends with sticks and iron rods. As the persons gathered, the petitioner and his associates charged upon those persons. Some of them ran" , , , ,

helter-skelter and the nearby shopkeepers downed the shutters of their shops and residents shut the doors of their houses. The said witness also , , , ,

claimed to have not reported the matter to police on account of the fear of the petitioner. , , , ,

26. In the light of the aforesaid cases registered against the petitioner and in-camera statements of the witnesses, the Detaining Authority recorded as" , , , ,

under : , , , ,

"I have carefully gone through the referred, in-camera statements and relied documents as well as statements of in-camera witnesses A and B," , , , ,

placed before me. , , , ,

Ongoing through fact of offences registered against you it becomes clear that you are a habitual bootlegger. , , , ,

As well as Department of Forensic Medicine and Toxicology, Dr. V.M. Government Medical College, Solapur have also given opinion that" , , , ,

"Consumption of ethyl alcohol in excessive amount is harmful to human body, which causes death." , , , ,

Ongoing through the fact of in-camera witnesses A and B as shown in Para No.5-9 and 5-10 of grounds of detention it becomes clear that you have , , , ,

created terror in the minds of public in that area. , , , ,

I am aware that, now a days you are free person, taking into consideration that you are a free person, your tendency and propensity reflected into the" , , , ,

offences committed you recently, as shown in above Para No.5-1 to 5-6 and Para No.5-9, 5-10, I am satisfied that you will likely to revert to the" , , , ,

similar activities prejudicial to the maintenance of public order in future. , , , ,

Thus, I am satisfied that you proved yourself as habitual bootlegger and acting in a manner prejudicial to the maintenance of public order." , , , ,

So, it has become necessary for me to detain you under MPDA Act, 1981 to prevent you from acting in such a prejudicial manner in future too.â??" ,,,,

27. In our view, the aforesaid observations of the Detaining Authority cannot be said to be based on no material and, thus, unsustainable. The" ,,,,

antecedents and acts attributed to the petitioner are required to be considered as a whole. There is material to indicate that the activities of the ,,,,

petitioner were such that they disturbed the even tempo of life of the ordinary citizens. It was not a case of a solitary incident. On the contrary, the" ,,,,

material on record unmistakably indicates that the petitioner has been continuously indulging in the acts prohibited under the Act, 1949. Registration of" ,,,,

almost 57 cases in a span of three years indicates the frequency and intensity with which the petitioner was indulging in bootlegging. From this stand ,,,,

point, the satisfaction arrived at by the Detaining Authority based on the statements of the witnesses, recorded in-camera, cannot be said to be" ,,,,

unsustainable. ,,,,

28. In the light of the aforesaid facts, the reliance placed by Mr. Yagnik on the judgment of this Court in the cases of Machindra Dnyanoba Jadhav" ,,,,

(Now in jail) Vs. The State of Maharashtra Cri. Writ Petition No.1191 of 2020 (Coram : T.V. Nalawade & M/G. Sewlikar, JJ and Ramesh Balu" ,,,,

Chavan Vs. The Commissioner of Police & Ors. 2017 All MR (Cri) 3683 appears well founded. ,,,,

29. In the case of Ramesh Balu Chavan (Supra), after recording the facts relating to the crimes registered against the detainee therein, wherein also," ,,,,

the detainee was alleged to be the person, who had supplied and distributed illicit liquor, and the in-camera statements of witnesses, the Division Bench" ,,,,

had recorded that the incidents attributed to the detainee therein were such that there was a feeling of alarm, danger and insecurity in the minds of the" ,,,,

people who had gathered at the spots. ,,,,

30. The judgment in the case of Ramesh Balu Chavan (Supra) also bears upon the third ground sought to be urged on behalf of the petitioner, namely," ,,,,

the satisfaction arrived at by the Detaining Authority that the prejudicial activity of the petitioner was likely to cause a grave or widespread danger to ,,,,

life or public health was based on the mere opinion of the Department of Forensic Medicine and Toxicology, Dr. V.M. Government Medical College," ,,,,

Solapur,,,,,

31. We have noted above that the Detaining Authority took into account the fact that the samples of contraband which were seized from the co-,,,,

accused of the petitioner were sent for forensic analysis and the Forensic Science Laboratory reported that the sample contained 4% to 14% Ethyl,,,,

alcohol in water. It further noted that the Department of Forensic Medicine and Toxicology, Dr. V.M. Government Medical College, Solapur opined",,,,,

that consumption of ethyl alcohol in excessive amount is harmful to human body, which causes death.",,,,

32. Ms. Tripathi would urge that reliance on aforesaid opinion, in itself, was not sufficient to record a satisfaction that the bootlegging activity was",,,,,

prejudicial to the maintenance of public order. Our attention was invited to the following observations in the case of Dattatray Baswant Jagtap (Supra),,,,,

:-,,,,

13. Merely the fact that the Petitioner is a bootlegger is not sufficient to warrant the invocation of the provisions of the M.P.D.A. Act against the,,,,

Petitioner. Mere possessing liquor also is not sufficient though in the facts of the present case, the Petitioner was not found in possession of the liquor",,,,,

at any point of time. But there is no material on record to show that the bootlegging activities of the Petitioner are prejudicial to the public order. The,,,,

Petitioner can be effectively dealt with under the General Law, i.e., under the Maharashtra Prohibition Act, so far as his involvement in the liquor",,,,,

business is concerned and he is being dealt with. In this view of the matter, the invocation of provisions of the M.P.D.A. Act by the detaining authority",,,,,

was not warranted in the facts of the present case. Only because the consumption of Ethyl Alcohol in excessive amount is harmful to human body",,,,,

which may cause death is the opinion given, it cannot be presumed that the Petitioner's activities are likely to prejudice the maintenance of public health",,,,,

in future. The detention in these facts under the M.P.D.A. Act is not warranted.â??,,,,,

33. The aforesaid observations, as is evident, were made in the peculiar facts of the said case. This Court had, in terms, recorded in the preceding",,,,,

paragraph (Para.12) that there was non-application of mind on the part of the Detaining Authority in ignoring the important requirement that there was,,,,

no cogent material available before the Detaining Authority to show that the

activities of the petitioner were prejudicial to the maintenance of public order. Vague and general allegations were made in the grounds of detention and the absence of material that the petitioner's activities were,

prejudicial to the maintenance of public order, vitiated the impugned order."

34. In the case at hand, as indicated above, there is cogent material. Moreover, in the case of Ramesh Balu Chavan (Supra), the Division Bench dealt

with an identical challenge based on the opinion of department of forensic medicine and toxicology. The observations in paragraph Nos. 14, 15 and 21

bear upon the controversy and hence extracted below :

14 Thereafter, Mr. Tripathi raised ground (b). In ground (b), it is stated that the Detaining Authority has relied on three C.Rs. registered under

Section 65(e) of the Bombay Prohibition Act, 1949. C.A. reports have been received in two cases i.e C.R. No. 245/16 and 257/2016. However, the

C.A. reports do not disclose the expert's opinion nor that the consumption of the seized contraband is injurious to health. The C.A. reports simply

mention the percentage of Ethyl alcohol in water. As such, it cannot be said that the public order is disturbed since there is no danger to the public

health.

15. Admittedly, the order of detention, grounds of detention along with accompanying documents were served on the detenu. Report from the

Department of Forensic Medicine & Toxicology has also been furnished to the detenu. This report clearly states that regular consumption of Ethyl

alcohol and Methyl alcohol causes ill effect over human body or heavy consumption can lead to death depending upon the condition and age of the

person. Mr. Tripathi tried to contend that this report shows that only if a person consumes Ethyl alcohol as well as Methyl alcohol together, it would

cause ill effect on human body or heavy consumption thereof can lead to death depending upon the condition and age of the person. We are afraid

that we cannot read the report in the way as contended by Mr. Tripathi. This report according to us shows that if Ethyl Alcohol 'or' Methyl Alcohol

are consumed by a person, it can cause ill effect on the human body or heavy consumption of any one of the two types of alcohol can lead to death

depending upon the condition and age of the person. The C.A. reports relating to C.R. No. 245/2016 and 276/2016 clearly show that the sample

contained Ethyl alcohol which is not a medicinal / antiseptic / toilet preparation

nor a favouring material. In addition, the report of Department of Forensic Medicine & Toxicology clearly shows that the regular consumption of Ethyl alcohol will cause ill effect on the human body or even one time heavy consumption of the same can lead to death depending upon the condition and age of a person. A person can be detained as a bootlegger if any of his activities are such that they directly or indirectly cause or are calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof, or a grave or widespread danger to life or public health."

â?!

21. As far as the two C.Rs. i.e 245/2016 and 257/2016 are concerned, we have, in the earlier paragraphs, discussed the C.A. reports and the report of

Department of Forensic Medicine & Toxicology which show that the samples were such that it would cause danger to the public health. On going

through Section 2 of the MPDA Act, we are of the view that a bootlegger can be detained under the provisions of this Act not only in case, he is

dealing in liquor which as per the report of the expert is harmful to the public health but also in case his activities as bootlegger create a feeling of

harm, danger or alarm or a feeling of insecurity among the members of the public. We have briefly discussed the facts relating to C.R. Nos. 245/16

and 257/2016 and the statements of incamera witnesses "A" & "B". All of them are such that they disturb the public order in one way or the other."

Thus, this ground too fails.â??

35. In the case at hand, the persistent and relentless bootlegging activity, as manifested by the registration of as many as 57 cases, against the

petitioner coupled with the chemical analysis reports and the opinion of the Medical Expert, justify an inference that the said activity was potentially

dangerous to public health. We, thus, find that the acts and conduct attributed to the petitioner were prejudicial to maintenance of public order on both

counts namely harm, danger or alarm or a feeling of insecurity among the general public, and grave danger to public health."

36. The upshot of the aforesaid consideration is that the challenge to the impugned order does not deserve countenance. The petition, therefore,

deserves to be dismissed.

37. Hence, the following order :"

ORDER,,,,

The petition stands dismissed.,,,,

Rule discharged.,,,,