

(2018) 08 BOM CK 0026

In the Bombay High Court

Case No : Criminal Writ Petition No. 888 Of 2012

Ramesh Radhamal Advani And Anr

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure, 1973 — Section 173(2), 173 (5), 482
Bombay Police Act, 1951 — Section 33(A)
Essential Commodities Act, 1955 — Section 3, 7(1)(a), 10A, 11
Indian Penal Code, 1860 — Section 21

Citation : (2018) 08 BOM CK 0026

Hon'ble Judges : T.V. NALAWADE, J;K.L. WADANE, J

Bench : Division Bench

Advocate : A.B. Kale, A.M. Hajare, P.V. Diggikar,

Final Decision : Dismissed

Judgement

T.V. NALAWADE, J

(1) The petition is filed under Articles 226 and 227 of Constitution of India and section 482 of Criminal Procedure Code for relief of quashing of F.I.R.

No. 20/12 dated 16.7.2012 registered with Faizpur Police Station, Tahsil Yawal, District Jalgaon. It is registered for offences punishable under

sections 3 r/w. 7 of the Essential Commodities Act and section 33 (A) of Bombay Police Act, 1951. Both the sides are heard.

(2) F.I.R. is given by Police Officer of S.D.P.O. Faizpur. On that day, police had specific information that in hotel Akashlakshya situated at Faizpur -

Bhusawal road, the business of prostitution was being done. The A.P.I. and police staff went to the said hotel in the night time and the jeep was

stopped at some distance. When they entered the hotel, they noticed that

petitioner No. 1 Ramesh was sitting at the counter. After seeing police, Ramesh somehow ran away and escaped. The staff of the hotel including Manager Manohar were there and when inquiry was made, they informed that petitioner No. 2 Harish, brother of Ramesh, was the owner of the hotel. The record regarding ownership and permission to run the business of hoteling was shown and it was in the name of Harish. Some persons were seen consuming liquor and taking dinner.

(3) During search, police could not see anything showing that prostitution business was being done, but they came across L.P.G. gas cylinder which was meant for domestic consumption and not for commercial use. The S.D.P.O. was also in the company of this raiding party. The panchanama was prepared by A.P.I. Shri. Patil and this cylinder was taken over. As L.P.G. cylinder which was to be used for domestic purpose only was being used for commercial purpose in hoteling business, the report was given for aforesaid offences and the crime came to be registered.

(4) The learned counsel for petitioners mainly submitted that the action of police was illegal and they could not have seized cylinder and they could not have registered the crime. The learned counsel placed reliance on the observations made by this Court in the cases reported as 2014 ALL M.R. (Cri.) 169 [Sunil Shreekrishna Mdani Vs. State of Maharashtra] and also AIR 2007 (4) (BOM) 259 [Sunil Premasukh Sancheti & Ors. Vs. State of Maharashtra].

(5) This Court has carefully gone through the scheme of Essential Commodities Act. Copy of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 2000 is produced on record and this Court has gone through the provisions of that Order. This Order is issued under section 3 of Essential Commodities Act, 1955. The provisions of Order show that if L.P.G. is supplied for particular use, that needs to be used only for that purpose and if it is used for other purpose, then it amounts to breach of the Order (Clause 3 (1) (c) of the Order).

(6) The provisions of section 3 r/w. section 7 (1)(a) (ii) show that breach of aforesaid Order falls under these provisions of Essential Commodities Act. The provision of section 10A shows that this offence is cognizable. Further, the aforesaid provision of section 7 of the Act shows that the punishment provided for this offence is seven years. Section 11 of the Act shows

that cognizance of such offence can be taken on the report given by public servant in writing and for the purpose of this section, the definition of public servant given in section 21 of IPC is to be used. The provision of section 11 further shows that even registered Consumer Association can approach the Court and on its complaint, cognizance of the offence can be taken by the Court.Â

(7) On aforesaid point, the observations made by the Apex Court in the case reported as AIR 1980 SUPREME COURT 506 [Satya Narain Musadi

and Ors. Vs. State of Bihar] can be referred :-

S. 11 of the Essential Commodities Act precludes a Court from taking cognizance of the offence punishable under the Act except upon a report in

writing of the facts constituting such offence made by a person who is a public servant as defined in S. 21, Penal Code. If a police officer investigating

into an offence which the Act has declared as cognizable submits a report in writing under S. 173 (2), Criminal P.C. disclosing an offence under the

Act and requesting for proceeding further into the matter it would satisfy the requirements of S. 11 for taking cognizance of the offence so disclosed.

Undoubtedly the police officer submitting the report would be a public servant within the meaning of S. 21, Penal Code. Such report would be a police

report for the purpose of S. 190(1)(b), Criminal P.C. and if the Magistrate takes cognizance of an offence under the Act upon such a police report S.

11 would be complied with in its entirety. The report as envisaged by Section 173 (2) has to be accompanied as required by S. 173 (5) by all the

documents and statements of the witnesses therein mentioned. One cannot divorce the details which the report must contain as required by S. 173 (2)

from its accompaniments which are required to be submitted under S. 173 (5). The whole of it is submitted as a report to the Court. It follows that the

Court can look at the report in prescribed form along with its accompaniments for taking cognizance of the offence.

(8) The aforesaid discussion and the scheme of Essential Commodities Act show that there is no prohibition, preventing the police to take cognizance

of the offence committed under Essential Commodities Act. This Court has no hesitation to observe that this point is not at all touched by this Court in

aforesaid two cases on which reliance is placed by the learned counsel for petitioners. Unless and until, there is absolute bar due to which police are

prevented from taking action, the Court cannot quash the F.I.R. Further, under the provisions of Bombay Police Act which are referred by this Court

in the case of Sunil cited supra also it is a duty of the police officer to step in when cognizable offence is committed in their presence. Such cases are

of chance detection and if law is interpreted as suggested by the learned counsel for petitioners, many offences will go undetected. As there is no bar

in this regard, this Court holds that it is not possible to quash the F.I.R. given against the petitioners.

(9) The material discussed above shows that petitioner No. 1 is a real brother of petitioner No. 2 and the hoteling business is of petitioner No. 2.

Petitioner No. 1 was sitting on the counter and so, for the present purpose inference is possible that he was involved in conducting the business of

hotel. Due to that, it cannot be said that he had no knowledge that the L.P.G. cylinder issued for domestic purpose was being used, in the hotel for

commercial purpose. In the result, the petition stands dismissed. Interim relief, if any, already granted is vacated. Rule stands discharged.