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2023:BHC-NAG:14992-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.817 OF 2023

APPLICANTS : **1** Lalit S/o Nandlal Bais, Aged about 50 years, Occ-Business, R/o Khat Road, Bhandara, Tahsil & District-Bhandara.

2 Abhay S/o Ramesh Bhagwat, Aged about 49 years, Occ-Business, R/o Ramayan Nagari, Khat Road, Bhandara, Tahsil & District-Bhandara.

3 Dr. Gopal S/o Satyanarayan Vyas, Aged about 48 years, Occ-Orthopedic Surgeon, R/o Takiya Ward, Bhandara, Tahsil & District-Bhandara.

4 Manish S/o Omprakash Saraf, Aged about 47 years, Occ-Business, R/o MIDC, Wardha, Tahsil & District-Wardha.

5 Sameer S/o Kamlakar Deshpande, Aged about 55 years, Occ-Business, R/o Surendra Nagar, Nagpur, Tahsil & District-Nagpur.

..**VERSUS**..

RESPONDENT : The State of Maharashtra through Police Station Officer, Police Station Umred, District-Nagpur.

Mr A. A. Naik, Advocate for Applicants.
Mr S. S. Doifode, Addl. P. P. for Non-Applicant/State.

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CORAM	:	VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
RESERVED ON	:	9th OCTOBER, 2023
PRONOUNCED ON	:	11th OCTOBER, 2023.

JUDGMENT : (PER : VALMIKI SA MENEZES, J.)

. **Admit**. By consent of the parties, this application invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 for quashing First Information Report (FIR) No.0300 of 2023 dated 31.05.2023 registered at Umred Police Station, Nagpur Rural for the offences punishable under Sections 294 and 34 of the Indian Penal Code, 1860, Sections 110, 131A, 33A, 112 and 117 of the Maharashtra Police Act, 1951 and Section 65(e) of the Maharashtra Prohibition Act, 1949, is heard and disposed of finally.

2. The facts in brief, that have led to the filing of the present application, are as under :

a) That Police Sub-Inspector Ashish Morkhade received secret information on 31.05.2023 that an

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obscene dance was being performed at a Banquet Hall in Tiger Paradise Resort and Water Park, Tirkhura. The secret information revealed that the audience, who were watching the scantily dressed women performing an obscene dance, were showering dummy currency notes on these women.

b) Based upon the secret information, Police Officials raided the said Banquet Hall and thereafter, lodged FIR pursuant to the complaint of the said Police Officer.

A reading of the FIR reveals that after the Police Officials entered the Banquet Hall, they witnessed that the six women were wearing short clothes and dancing indecently, while the audience/onlookers were showering fake notes of denomination of Rs.10/- on these women. The FIR further records that some of the onlookers were consuming alcohol. On asking the onlookers for their names, twelve names of the onlookers were disclosed, of which, the Applicant

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Nos.1 to 5 are respectively Accused Nos.1, 2, 3, 5 and 6 as arrayed in the FIR.

c) The FIR further reveals that three bottles of foreign liquor were found with Arun Abhay Mukharji (Accused at Serial No.12 in FIR) at the Banquet Hall apart from Disc Jockey (DJ) Music System, an Audio System, Sound Level System, Laptops and other equipment. These were attached under seizure panchanama along with the dummy notes.

d) The six dancers were also roped in the FIR as Accused Nos.13 to 18.

The FIR records that based upon these facts, the five Applicants, amongst the Eighteen Accused have committed offences punishable under Section 294 of the IPC read with Section 34, Sections 110, 131A, 33A, 112 and 117 of the Maharashtra Police Act, 1951 (hereinafter referred to as "Police Act") and under Section 65(e) of the Maharashtra Prohibition Act,

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1949 (hereinafter referred to as “Prohibition Act”).

3. The four main grounds as raised in the application seeking quashment of the FIR and as argued by the learned Advocate for the Applicants Mr Akshay Naik are :

a) That, the specific ingredients of Section 294 of the IPC have not been made out on a plain reading of the FIR, in that there is no reference in the facts that any person or the complainant experienced a sense of annoyance by witnessing the dancing girls.

b) That, the dance performance was within a Banquet Hall of a Resort, which was neither in a public place nor open to public view for any member of the public to feel a sense of annoyance.

c) That, the acts complained of by the women, who were performing a dance, could not be termed as obscene acts as referred to Section 294 of IPC; That merely because a Police Officer, in his opinion, feels

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these women were scantily dressed or dancing with movements which he felt were obscene, an offence cannot be said to be made out under that provision of the IPC.

d) That, the offences under Sections 110, 131A, 33A, 112 and 117 of the Police Act and under Section 65(e) of the Prohibition Act, have also not been made out against the Applicants for the following reasons;

There is no specific material against the Applicants in the FIR that the Applicants indulged in sale or purchase or possession of foreign liquor and the statement in the FIR only refers to liquor bottles being found in the Banquet Hall. Thus, provisions of Section 65(e) of the Prohibition Act would not be attracted.

Further, that the provisions of Sections 110 and 112 of the Police Act would not apply since the Banquet Hall was not a “public place”, as defined

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under Section 2(13) of the Police Act and any event, there is no allegation in the FIR that the Applicants had indecently exposed themselves or used indecent language or misbehave to attract the provisions of Sections 110 and 112 of the Police Act; That the provisions of Section 131A could be applied only in respect of a place of public entertainment or a place in which a dancing school is conducted or for eating house, and not to a Banquet Hall taken on hire for private use; and further that the provisions of Section 33A having been struck down as *ultra vires* by this Court and not being on the statute book, could not have been invoked.

4. In support of the above contentions/submissions, the Applicants have relied upon a Division Bench Judgment of this Court interpreting the provisions of Section 294 of the IPC in ***Amardeep Singh Chudha and Ors. vs State of Maharashtra***, reported in ***2016 SCC OnLine (Bom.) 2286***, to contend that the provisions can

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be invoked only where the the premises where offence has been alleged to have taken place is shown to be accessible to the public at large, who must have free ingress to such a place.

To further buttress his argument that the provisions of Section 294 of IPC do not get attracted to a case merely because in the opinion of the Police, the manner in which the girls were dressed or their style of dancing was obscene or provocative, the learned Advocate for the Applicants has relied upon a judgment of the Hon'ble Supreme Court in ***Indian Hotel and Restaurant Association (Ahar) and Anr. vs. State of Maharashtra***, reported in ***(2019) 3 SCC 429***.

5. In answer to the allegations made in the application and grounds taken therein, the Non-Applicant filed an Affidavit-in-reply dated 19.07.2023, through the Police Sub-Inspector, P.S. Umred, Nagpur contending at Paras 4 and 10 thereof that the entire raid was conducted on the basis of secret information that an obscene dance

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was being performed by women, who were in short clothes in the concerned Resort and that, on conducting a raid at the Banquet Hall, six girls were seen at the Hall in short clothes, dancing in an indecent manner by making obscene gestures. The Affidavit further reveals that the customers were also dancing with the girls and showering dummy currency notes on them, hence substantiating the filing of the FIR.

6. We have heard the learned Advocate Mr Akshay Naik for the Applicants and Mr S. S. Doifode, learned Additional Public Prosecutor for the Non-Applicant/State, recorded their submissions, and perused the record of the FIR.

7. The first question which falls for our decision is, whether the FIR discloses, from plain reading of facts contained therein, an offence made out under Section 294 of the IPC against the five Applicants herein. To examine this issue, it would be apposite to quote the provisions of Section 294 of IPC as under :

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> *“294. **Obscene acts and songs.**-- Whoever, to the annoyance of others,*
>
> *(a) does any obscene act in any public place, or*
>
> *(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”*

8. Before we proceed to examine the ingredients of this offence, we must be mindful of the fact that Section 294 is included under Chapter XIV of the IPC, being offences affecting public health, safety, convenience, decency and morals. Though, the provisions of Section 294 provide a punishment of imprisonment which may extend to only three months or with fine or with both, and would otherwise be classified as a non-cognizable offence, the same has been classified by the legislature to be a cognizable and non-compoundable offence.

9. For an offence under Section 294 to have been committed, the Accused has to primarily commit an obscene act or sing, recite or utter any obscene song, ballad

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or words. It is further a requirement of both, Clauses (a) and (b) of Section 294, that in both cases, the act should be committed in a public place or in the case of Clause (b), the obscene words may also be sung/recited/uttered near a public place, essentially meaning it is required to be heard and be audible to any member of the general public.

Section 294 further requires that the obscene act or the obscene song or words must, after being seen or heard, be to the annoyance of others, meaning thereby, a specific complaint should be made by people in the immediate vicinity of either of these acts.

10. Adverting to the specific statement made in the FIR, it is clear from a plain reading of its contents that there is no allegation against the five Applicants that they themselves, have indulged in any obscene act. It is not the case of the prosecution that Clause (b) of Section 294 of the IPC would be attracted, as there is absolutely no allegation that even the remaining Accused have sung, recited or uttered any obscene song or words.

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Thus, from a plain reading of the provision of Section 294, there being no allegation against any of the Applicants before us that they have indulged in any obscene act nor there being any specific statement in the FIR *qua* the Applicants of obscenity or any act of the like nature, no offence could be said to be made out on the face of the FIR.

We take further note of the fact that the only allegation of what the Police Officials, who have raided the place, consider to be an obscene act, is the act of the Accused Nos.13 to 18, who are alleged to have dressed in short skirts and were dancing in a provocative manner. However, there is no allegation of similar nature with respect to the five Applicants, to bring them within the offence under Section 294 of IPC.

11. This brings us to the second argument of the Applicants, that the alleged acts of obscenity were not committed at a "public place". In the light of our discussion on the ingredients of Section 294 in the preceding

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paragraphs, though this argument may be insignificant, we would still address it in relation to the facts stated in the FIR.

The FIR refers to the incident having taken place in a Banquet Hall at a Resort. Though, there is reference to the fact that the Applicants amongst other persons present, had hired one of the rooms in the Resort, the facts stated in the FIR clearly set out that the alleged obscene act of the scantily clad women dancing in an obscene manner took place in a Banquet Hall. There is nothing on record to establish that the Banquet Hall was an enclosed space, with restrictive entry and was not open to public access.

12. This Court has dealt with a case having somewhat similar facts, where the question that arose was whether a night club/cabaret dance run in an exclusive restaurant for which the right of entry was reserved on payment of a fee, could be considered to be a "public place" for the purpose of Section 294 of IPC. In ***Narendra H. Khurana and Ors. vs Commissioner of Police,*** reported in ***2000 (2) Mh.L.J.***

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72, this Court has held as under :

> *"**12.** We now turn to the second limb of the question referred to us. In his ruling, in the case of State of Maharashtra v. Miss Joyce, reported in I.LR. (1973) Bom. 1299 (supra). Justice Rege has observed that he has grave doubts as to whether places like Hotel Blue Nile could be considered to be such a public within the meaning of Section 294 with an admission fees as required to be paid for the cabaret shows as was done in that case. He proceeds to observe that when an adult person pays and goes to attend such a shows he runs a risk of being annoyed by the obscenity or being entertained by the very obscenities according to his tastes. From these words a doubt is raised, whether hotels like the one involved in this case are public places or not.*
>
> *In our considered view, an enclosed area in a posh hotel where cabaret dance is performed cannot be said to be a private place merely by reason that entry is restricted to persons purchasing the highly priced tickets and costly food and drinks are served. A posh hotel is as much a public place as a cinema house. Entry to a hotel just like a cinema house cannot be and is not being restricted to anybody. A hotel must definitely be placed accessible to all except perhaps subject to reasonable restrictions allowed by law. It continues to be a public place. If any portion of the hotel is earmarked for persons who opt to pay a particular amount, it does not cease to be a public place for that reason, because without discrimination anybody will have access on such payment. Therefore, there is no point in contending that a portion of a hotel where the only restrictions for entry on some payments is not a public place. Otherwise, the result will be that any public place could be made a private place by enclosing the same and restricting entry to persons who can afford payment of huge amounts. If "public place" is determined on the amount of money, one may have to shell out for securing admission the*

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> *position will be pitiable and it will only tend to judicial recognition of corruption. If what is prohibited in a cinema house where people are admitted for charges within their reach is not taboo for the rich who could afford to witness such shows for higher tickets with additional amounts for drinks and food, the position is really ridiculous. The position will be that those who could afford enormous amounts could conduct or witness obscene acts with impunity. That is not the legal intent. If that principle is accepted the criterion for deciding a public place will be the amount that is expended for getting entry. If so a cinema house also will cease to be a public place if the ticket charges are enormously increased and it is provided that consumption of costly food and drinks on payment is also a must. That is not what the law intended as the criterion for deciding whether a place is public or not. If that is the criterion every public place could be converted into a private place by restricting entry to rich persons who alone could afford the luxury. The result will be that any obscenity which is prohibited to the poor will not be a prohibited obscenity for the rich. That will lead to a very unhappy position. So also previous advertisement of what is going to be performed cannot have the effect of converting a public place into a private place or obscenity into something which is not obscene."*

13. The Indian Penal Code does not define what is a "public place". It would, therefore, stand to reason, that for examining whether a place of occurrence of an offence under Section 294 would fall within the meaning of the words "public place", it would be necessary to examine the facts of each case in relation to the spot or area, where the

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offence is alleged to have taken place. Applying the reasoning adopted in ***Narendra H. Khurana*** (supra) to the facts of this case, a Banquet Hall, in a Resort, in the absence of any material on record to demonstrate that it was in exclusive and private use of the Applicants or any other Accused persons in this case, must be held to be a "public place" within the meaning of those words as contained in Section 294 of IPC.

14. It is the argument of the learned Addl. P. P. that the provisions of Section 294 would squarely apply to the facts of the present case, in that, there are clear allegations by the Police Officer, who has conducted the raid that secret information had been received from members of the public that obscene acts were being committed by the Accused Nos.13 to 18, who were dancing in short skirts and making obscene gestures; it was further the submission for the State that the five Applicants, being part of the group of persons participating in the obscenity would be equally responsible for the obscene and immoral acts, and the fact

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that there was secret information, belies the complainant's stand that annoyance was caused to the members of the public, who had given the secret information. It was further submitted that the complaint records that the ladies who were performing a dance were in short skirts and dancing provocatively and this by itself can be considered an obscene act under Clause (a) of Section 294.

This submission has been opposed by the learned Advocate Mr Akshay Naik for the Applicants, who submits that this is clearly a case of moral policing on the part of the Investigating Agency, as the law does not permit a prosecution to be launched merely on the subjective morality or perception of the complainant as to what acts constitute obscenity for the purpose of Clause (a) of Section 294. He further submits that this question has been dealt with in detail by the Hon'ble Supreme Court in ***Indian Hotel and Restaurant Association (Ahar) and Anr. vs. State of Maharashtra and Ors.*** reported in ***(2019) 3 SCC 429***, whilst dealing with the challenge to the *vires* of certain

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provisions of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 and Rules framed thereunder. Learned Advocate for the Applicants has further referred to para 8 of that judgment which deals with Section 2(8) of that Act, where "obscene dance", which is defined as a dance i.e. obscene within the meaning of Section 294 of the IPC has been dealt with, and has submitted that the Supreme Court in that case has dealt with the arguments of morality, as submitted by the prosecution in the present case.

15. In ***Indian Hotel and Restaurant Association (Ahar)*** (supra), the question as to what extent can the State go to imposing "morality" on its citizens has been dealt with in the below quoted manner :

> *"77) We would like to deal at this stage with the argument of morality, as advanced by by Mr Naphade. The question is to what extent the State can go in imposing 'morality' on its citizens? In the first instance, we would take note of certain judgments of this Court touching upon this aspect….*

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__79)__ It needs to be borne in mind that there may be certain activities which the society perceives as immoral per se. It may include gambling (though that is also becoming a debatable issue now), prostitution etc. It is also to be noted that standards of morality in a society change with the passage of time. A particular activity, which was treated as immoral few decades ago may not be so now. Societal norms keep changing. Social change is of two types: continuous or evolutionary and discontinuous or revolutionary. The most common form of change is continuous. This day-to-day incremental change is a subtle, but dynamic, factor in social analysis. It cannot be denied that dance performances, in dignified forms, are socially acceptable and nobody takes exceptions to the same. On the other hand, obscenity is treated as immoral. Therefore, obscene dance performance may not be acceptable and the State can pass a law prohibiting obscene dances. However, a practice which may not be immoral by societal standards cannot be thrusted upon the society as immoral by the State with its own notion of morality and thereby exercise 'social control'. Furthermore, and in any case, any legislation of this nature has to pass the muster of constitutional provisions as well. We have examined the issues raised in the aforesaid context.

__95)__ This provision is to be read with conditions 6, 7 and 8 of Part B. It makes throwing or showering coins, currency notes or any article or anything which can be monetized on the stage or handing over personally such notes, to a dancer is banned and treated as an offence. Further stipulation in these provisions is that any tip to be given should be added in the bill only and is not to be given to the performers etc. The justification given by the State is that showering of money etc. is a method of inducement which has to be curbed keeping in view that Act aims to protect the dignity of women. According to the respondents, Section 354A of IPC which is a moral code of the society and the State is only attempting to preserve

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> *this moral code by enacting such a provision. We are of the opinion that insofar as throwing or showering coins, currency notes etc. is concerned, the provision is well justified as it aims at checking any untoward incident as the aforesaid Act has tendency to create a situation of indecency. Therefore, whatever money, any appreciation of any dance performance, has to be given, can be done without throwing or showering such coins etc. However, there may not be any justification in giving such tips only by adding thereto in the bills to be raised by the administration of the place. On the contrary, if that is done, the person who is rightful recipient of such tips may be denied the same. Further, State cannot impose a particular manner of tipping as it is entirely a matter between an employer and performer on the one hand and the performer and the visitor on the other hand. We, therefore, uphold the provision insofar as it prohibits throwing or showering of coins, currency notes or any article or anything which can be monetised on the stage. However, handing over of the notes to the dancers personally is not inappropriate. We also set aside the provision of giving the tips only by adding the same in the bills."*

16. ***Indian Hotel and Restaurant Association (Ahar)*** (supra) makes reference to an earlier judgment of the Hon'ble Supreme Court in ***State of Maharashtra & Anr. vs. Indian Hotel & Restaurants Assn. & Ors. (Civil Appeal No.2705 of 2006)*** decided on 16.07.2013 and reported in ***(2013) 8 SCC 519***, wherein the Hon'ble Supreme Court upheld the judgment of this Court dated 12.04.2006

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striking down the provision of Section 33A of the Bombay Police Act, 1951 as being *ultra vires* Article 19(1)(g) of the Constitution of India. In ***State of Maharashtra & Anr. vs. Indian Hotel & Restaurants Assn. & Ors.*** (supra), the Hon'ble Supreme Court also dealt with the argument supporting the maintenance of Section 33A of the Police Act on the statute book on the basis of morality of the work of women dancing at Bars, holding thus :

> *"**108.** Incongruously, the State does not find it to be indecent, immoral or derogatory to the dignity of women if they take up other positions in the same establishments such as receptionist, waitress or bar tender. The women that serve liquor and beer to customers do not arouse lust in customers but women dancing would arouse lust. In our opinion, if certain kind of dance is sensuous in nature and if it causes sexual arousal in men it cannot be said to be more in the prohibited establishments and less in the exempted establishments. Sexual arousal and lust in men and women and degree thereof, cannot be said to be monopolized by the upper or the lower classes. Nor can it be presumed that sexual arousal would generate different character of behaviour, depending on the social strata of the audience. History is replete with examples of crimes of lust committed in the highest echelons of the society as well as in the lowest levels of society. The High Court has rightly observed, relying on the observations of this Court in Gaurav Jain Vs. Union of India[44], that "prostitution in 5 star hotels is a licence given to a person from higher echelon". In our opinion, the activities which are obscene or which are likely to deprave and corrupt those whose minds are*

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open to such immoral influences, cannot be distinguished on the basis as to whether they are performing in 5 star hotels or in dance bars. The judicial conscience of this Court would not give credence to a notion that high morals and decent behaviour is the exclusive domain of the upper classes; whereas vulgarity and depravity is limited to the lower classes. Any classification made on the basis of such invidious presumption is liable to be struck down being wholly unconstitutional and particularly contrary to Article 14 of the Constitution of India.

110. *Upon analyzing the entire fact situation, the High Court has held that dancing would be a fundamental right and cannot be excluded by dubbing the same as res extra commercium. The State has failed to establish that the restriction is reasonable or that it is in the interest of general public. The High Court rightly scrutinized the impugned legislation in the light of observations of this Court made in Narendra Kumar (supra), wherein it was held that greater the restriction, the more the need for scrutiny. The High Court noticed that in the guise of regulation, the legislation has imposed a total ban on dancing in the establishments covered under Section 33A. The High Court has also concluded that the legislation has failed to satisfy the doctrine of direct and inevitable effect [See: Maneka Gandhi's case (supra)]. We see no reason to differ with the conclusions recorded by the High Court. We agree with Mr. Rohatgi and Dr. Dhawan that there are already sufficient rules and regulations and legislation in place which, if efficiently applied, would control if not eradicate all the dangers to the society enumerated in the Preamble and Objects and Reasons of the impugned legislation.***"**

17. In ***Pawan Kumar vs. State of Haryana and Ors.,*** reported in ***(1996) 4 S.C.C. 17,*** the Hon'ble Supreme

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Court was dealing with the question whether an Accused convicted under Section 294 of IPC could be said to have committed an act of "moral turpitude" to justify his dismissal from Government Service. Whilst dealing with the issue, the Hon'ble Supreme Court also dealt with the ingredients to be proved for bringing home a conviction under Section 294 of IPC and has held as under :

> *"**9.** In order to secure a conviction the provision requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed. The measure of sentence of three months impossible thereunder suggests that such offence is tribal summarily under Section 260 of the Code of Criminal Procedure, it being not an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. When the accused does not plead guilty, Section 264 of the Code of Criminal Procedure enjoins upon the Magistrate that he shall (i) record the substance of the evidence; and (ii) a judgment containing a brief statement of the reasons for the finding. Conversely put, when the accused pleads guilty, the Magistrate may not be obliged to write a judgment containing a brief statement of the reasons, but the Magistrate is not absolved of the obligation to record the substance of the evidence. Otherwise, it*

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would be difficult to conceive as to what could the accused have pleaded to. His plea of guilt is an admission to whatever factual data the prosecution lays before the court about the commission of the offence. Pleading guilty by the accused to the violation of a provision of law is no plea at all, as he would have to be confronted with the substance of the allegation, in order to enter upon a plea, one way or the other. When the substance of the allegations is not put to the accused , his entering any kind of plea is no plea legally, due to the non observance of such procedural requirement of utmost importance.

13. *We had required of the respondents to produce before us the copy of the Judgment whereby the appellant was convicted for the offence. As was expected only a copy of the institution/summary register maintained by the court of the Chief Judicial Magistrate, Bhiwani was placed before us showing that the appellant on 4-6-1980 was imposed a fine of Rs.20/-. A copy of the treasury challan supporting that the fine paid was deposited by the Chief Judicial Magistrate the same day has also been produced. The copy of summary register neither discloses the substance of the allegations put to the appellant, nor the words in which the plea of guilt was entered. It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Ex facie it only shows that the entry concerns F.I.R. No.231/3-6-1980 under Section 294 IPC. Therefrom it is difficult to discern the steps taken in the summary trial proceedings and what had the appellant pleaded to as guilty, whether to the allegations in the FIR or to the provision of the IPC or any other particular? Mere payment of fine of Rs.20/- does not go to show that the conviction was validly and legally recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral*

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turpitude, without satisfying the tests laid down in the policy decision of the government. We are rather unhappy to note that all the three courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under Section 294 IPC per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 IPC on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels.

18. Whilst on the subject, we also quote the observations of this Court in ***Narendra H. Khurana*** (supra) on the interpretation of the provision of Section 294 of IPC and the ingredients to be proved to sustain a conviction. It has been held thus :

*"**8.** At the outset, we must refer to the provision of Section 294 of Indian Penal Code.*

*"**294. Obscene acts and songs.**--Whoever, to the annoyance of others.*

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song ballad or words, in or near, any public place, shall be punished with imprisonment of either description for a term which may extend to three months or with fine, or with both."

Therefore, the object and scope of the said provision is intended to prevent a obscene act being performed in public to the annoyance of public at large. The essential ingredients of the offence under

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this Section are as follows :-

i) an act must have been done in a public place;

ii) the said act must be obscene; and

iii) the same must cause annoyance to others.

Time and again it is well established that mere performance of obscene or indecent act is not sufficient but there must be a further proof to establish that it was to the annoyance to others. Annoyance to others is essential to constitute an offence under this Section. Where there is no evidence recorded about the language used or act done causes annoyance to anybody, a conviction under this Section cannot be sustained. From the wording of this Section it is clear that annoyance should be caused to the others. This Section does not limit the scope of the word "others" to mean the person who is intended victim of the obscene act. It is enough if the obscene act is committed in public and causes annoyance to anybody be he the contemplated victim of the offender or not.

This being the established legal position, let us now turn to the two rulings of this Court of the learned Single Judges. Justice Vaidya in his judgment in the case of State of Maharashtra v. Miss. Joyce reported in I.L.R.(1973) Bom. 1299, had occasion to deal with dilemma with which we are dealing with today. Incidentally, the case arose from the incident which took place at Blue Nile Hotel. The learned Single Judge observed that, when an adult person pays and goes to attend such show he runs the risk of being annoyed by the obscenities or being entertained by the very obscenities according to his taste. Some persons so going may be disappointed with the absence of obscenities. Even assuming that the hotel where anybody can buy tickets or seats, is considered to be a public place, it cannot, therefore be said that the obscenity and annoyance which are punishable under Section 294 of Indian Penal Code are caused without

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the consent express or implied of the adult persons attending such cabaret dance on the floor of the hotel. He further expresses his doubt whether a hotel like Blue Nile could be considered to be a public place as contemplated by Section 294 of the Indian Penal Code when an admission fees is required to be paid for cabaret shows. He also relied on the unreported judgment of Justice Rege in Criminal Appeal No. 1541 of 1971 decided on 20-6-1973. Justice Rege in his judgment observed thus-

> *"Looking to the wording of the Section, therefore, the question as to an act being to the annoyance of the others cannot be considered objectively without reference to the persons actually witnessing the act. It cannot be the intention of the Legislature that even if a particular obscene act done in a public place is enjoyed by all those witnessing the same without in any way getting annoyed thereby, it can still be considered to be an offence under the Section, if looking at it objectively, the Court finds that it would have annoyed others who were not actually present to witness the said act. In my view, the wording of Section 294 does not admit of any such a wide interpretation. The Court will have to find out from the evidence whether any persons at a given time witnessing a particular obscene act was actually annoyed or not."*

Taking into consideration the up-till now established position as reflected by judgments of the Single Judges referred to above, it appears to be the rule that wording of Section 294 does not admit of any wide interpretation than what can be gathered from the plain reading thereof. In this reference, the learned Single Judge (S.S. Parkar, J.) has expressed apprehension that such interpretation may lead to undesirable consequences especially if we take into account our cultural thoughts and moral standards of our civilization. It is indeed true that our society has not yet come to appreciate such performances or

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> *conduct in public. However, in our considered view, we cannot overlook the plain meaning of the legislative enactment in this regard i.e. the wording of Section 294 of the Indian Penal Code."*

19. Fortified by the ratio laid down in the aforementioned judgments of the Hon'ble Supreme Court and of this Court, we are constrained to reject the submissions made by the learned Addl. P. P., both on the question of claims of the complainant that the girls found dancing in skimpy clothes were indulging in obscene or immoral acts as also the submission that the FIR would disclose that such acts were to be annoyance of others.

20. We are of the considered opinion that the acts of the Accused Nos.13 to 18 referred to in the complaint/FIR, namely wearing short skirts, dancing provocatively or making gestures that the Police Officials consider obscene cannot be termed to be *per se* obscene acts, which could cause annoyance to any member of the public. Whilst holding so, we are mindful of the general norms of morality prevalent in present Indian Society and take judicial note of

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the fact, that in present times it is quite common and acceptable that women may wear such clothing, or may be clad in swimming costumes or such other revealing attire. We often witness this manner of dress in films which pass censorship or at beauty pageants held in broad public view, without causing annoyance to any audience. Surely the provisions of Section 294 of IPC would not apply to all this situation and we are unable to countenance a situation where acts such as the ones referred to in the FIR would be judged by a Police Officer, who in his personal opinion considers them to be obscene acts to cause annoyance to any member of the public. Taking a narrow view as to what acts could constitute an obscenity would be a retrograde act, on our part. We prefer taking a progressive view in the matter and are unwilling to leave such a decision in the hands of Police Officials.

In any event, there is no averment or allegation made in the FIR that the five Applicants have indulged in any acts of obscenity or that any of the remaining Accused,

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including Accused Nos.13 to 18 have committed acts of obscenity that cause annoyance to members of public. There is no fact stated in the complaint that any specific person felt a sense of annoyance. Consequently, we hold that the ingredients of an offence under Section 294 of IPC are not made out in the FIR/complaint dated 31.05.2023.

21. We shall now deal with the contentions of the Applicants that the FIR does not disclose the ingredients of an offence under Sections 110, 112 or Section 131A of the Police Act or an offence under Section 65(e) of the Prohibition Act.

Section 65(e) of the Prohibition Act provides for a penalty for acts of sale or purchase or possession of any intoxicant such as liquor, in contravention of the provisions of the Act and Rules made thereunder. There is no statement alleging that the Applicants were either in possession or had purchased liquor in contravention of any licence or any provision or rule of the Prohibition Act. Though, three bottles of liquor were seized, there is no

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averment in the complaint that they were seized from the possession of the present Applicants. Thus, the offence under Section 65(e) has not been made out.

22. Section 110 of the Police Act deals with indecent exposure by a person in a street or public place in a manner as to be seen from any public place. Section 112 of the Police Act states that no person shall use in any public place any threatening, abusive or insulting words or behave with intent to provoke a breach of peace. There is not a single averment in the entire FIR, which alleges against the Applicants any act of indecent exposure or any act of the use of abusive language such that it would provoke a breach of peace. Section 131A prescribes a penalty for failure to obtain a licence under the Police Act in respect of a public entertainment or a place in which a dancing school is conducted. This provision would clearly apply only to occupier of such a place for public entertainment and not to the Accused Nos.1, 2, 3, 5 and 6 (Applicants herein), against whom there is no allegation in the complaint that

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they were the owners or occupiers of the Banquet Hall or even that the Banquet Hall was a place of public entertainment or used for conducting a dancing school.

Strangely, even though the provisions of Section 33A of the Police Act have been struck down by this Court in ***Indian Hotel & Restaurants Assn.*** as being *ultra vires* the Constitution, and that judgment has been upheld by the Hon'ble Supreme Court in ***State of Maharashtra & Anr. vs. Indian Hotel & Restaurants Assn. & Ors.*** (supra), the FIR has been also filed under this provision. Considering that Section 33A is no more on the statute book, the Applicants cannot be prosecuted under that provision.

Consequently, we are of the considered opinion that none of the ingredients of Sections 110 and 112 of the Police Act can be attracted in the present case as there are no allegations made in the FIR that can substantiate applying these provisions.

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23. For all the reasons stated above, we do not find that there is any material in the FIR/complaint impugned in this application on the basis of which the offences under Sections 294 and 34 of the Indian Penal Code, 1860, Sections 110, 131A, 33A, 112 and 117 of the Maharashtra Police Act, 1951 and Section 65(e) of the Maharashtra Prohibition Act, 1949 can be investigated or prosecuted. Consequently, we find that this is a fit case to exercise our inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 to quash the First Information Report (FIR) No.0300 of 2023 dated 31.05.2023 registered at Umred Police Station, Nagpur Rural for the offences punishable under Sections 294 and 34 of the IPC, Sections 110, 131A, 33A, 112 and 117 of the Maharashtra Police Act and Section 65(e) of the Maharashtra Prohibition Act, against the Applicants. We order accordingly.

(VALMIKI SA MENEZES, J.) **(VINAY JOSHI, J.)**

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