

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4275 OF 2012

Mahesh Sanjeev Shetty and Anr. .. Petitioners
Versus .. Respondents
State of Maharashtra & Anr.

Mr.H.E.Palve for petitioners
Mr.K.V.Saste, APP for State.

CORAM : S. C. DHARMADHIKARI &
S.B.SHUKRE, JJ.
19th July 2013.

P.C.:

1] Heard Mr.Palve for petitioner and Mr.Saste for respondent State. Upon perusal of the petition with annexures and the affidavit in reply of the Assistant Commissioner of Police, what we find is that the offences which are alleged are punishable under section 394 and 471 of the Mumbai Municipal Corporation Act, 1888.

2] First provision deals with not possessing a licence and without any licence being granted by the Commissioner, indulgence in any of the acts which require a licence in terms of section 394 of the MMC

Act cannot be done. Therefore, that is an offence punishable with fine and section 471 of the MMC Act at serial number 120 and 121 provide for imposition of fine of Rs.2500/- and which fines are maximum and minimum. There is no punishment other than this. It was difficult for the learned APP to justify as to on what basis the F.I.R. has been registered. Ordinarily for such offences, the police stations do not register an F.I.R. but there are specific authorities in whom the powers are conferred to recover fines. In the event, the matter is contested, it goes before the competent court. However, at no stage one finds that the criminal law is set in motion in such matters by filing an F.I.R. within the meaning of section 154(1) of the Cr.P.C. This aspect has been clarified repeatedly by the judgements of this Court as also the Supreme Court.

3] In the above circumstances and when the uncontroverted position on record is that the averments in the petition that the offences are bailable in nature and that the F.I.R. does not disclose any offence other than one under MMC Act, 1888, the petition succeeds.

4] The F.I.R. registered in this case by Vakola police station in C.R.No.20 of 2012 is quashed. However, this order does not prevent the authorities from proceeding in accordance with law and particularly MMC Act, 1888.

(S.C.DHARMADHIKARI, J)

(S.B.SHUKRE, J)