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C. C. No. 1603 / PW / 2020.
(Old case No.988/PW/2020)

C/S filed on : 17.06.2020
Decided on : 19.10.2020
Duration : 4 M & 2 Days.

Exh. 26.

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
10TH COURT, ANDHERI, MUMBAI.
(PRESIDED OVER BY R. R. KHAN)**

C. C. No. 1603 / PW / 2020.
(Old case No.988/PW/2020)

The State (D. N. Nagar Police Station Complainant.
in C. R. No. 211/2020 through informant
Durgesh Harishchandra Salunkhe)

V/s.

- 1) Niiazov Nurgazy, Age - 39 years,**
Add - JALAL ABORT CITY, NO. 03722, KOK - JANNAR -14
- 2) Dokturbek Uulu Mirlan, Age - 30 years,**
Add- CHYISKIR RAION, CHYI CITY BUSONLLNSHYI NO.117/2,
- 3) Abdylaev Mirbek, Age - 37 years,**
Add- Kart city, No.312, Pushkia Street No.39,
- 4) Niiazbekon Milan, Age - 50 years,**
Add- KAJOKOLI CITY + 996778551022, Aldashere No.4,
- 5) Khalilov Mukhammadzhon, Age - 24 years,**
Add- ANAVAN NO.18, KYRGYZSTRAN,
- 6) Imashev Baatyrbek, Age - 41 years,**
Add- Noryn City, Lenin Street, No.10, B-26.
- 7) Zhanaliev Altynbek, Age - 41 years,**
Add- Bishkek City No.312, + 996559024277, Kojoyr No.48,
Jetiger No.1.
- 8) Zhaiev Zhenishbek, Age - 31 years,**
Add- Bishkek City Code No.312, Too Ashu No.14,
- 9) Abdrazakov Altynbek, Age - 44 years,**
Add- Bishkek City Code No.312, Lev Tolstoy No.99,
- 10) Talantbek Uulu Dastan, Age - 29 years,**
Add- Kart City Room No.312, Sakyporo No.134.

..... **Accused.**

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**Offence : U/Sec. 37(3) of Bombay Police
Act punishable under section 135
of Bombay Police Act.**

Assistant Public Prosecutor : Shri P. S. Sapkale.

Advocate for all the accused : Shri A. N. Shaikh

J U D G M E N T

(Delivered on 19.10.2020)

The accused are facing trial for the offence 37(3) of Bombay Police Act punishable under section 135 of Bombay Police Act.

2 The case of prosecution unfurled during the trial is as under -

On 05.04.2020, the informant PSI Durgesh Harishchandra Salunkhe lodged FIR against accused persons for various offences under sections 188, 269, 270 of I. P. C. alongwith section 14 of Foreigners Act, section 3 of the Epidemic Act and section 51 of the Disaster Management Act. In FIR, it is stated by informant that on account of out-breaking of COVID-19 in the month of December-2019 in China number of citizens got infected and died. In second week of March-2020 certain persons from Maharashtra were found infected, therefore, Government of Maharashtra initiated the program of social distancing. Accordingly, the Principal Secretary of Government of Maharashtra issued order bearing No.DMU/2020/CR-92/DCM-1 dtd.23.03.2020 for the Epidemic Disease Act and Disaster Management Act. Furthermore, on 24.03.2020, national lock-down was imposed for 21 days with

certain instructions from Central Government. Additionally, Commissioner of Police, Greater Bombay issued order bearing No.CP/XI(6)144(Ban on tour operation)/2020, dtd.22.03.2020. The said information was displayed through news papers, TV Channals for sensitizing and awaring the public. On 29.03.2020, at about 10.00 a.m. the informant alongwith his associates visited Tayyaba Masjid, in front of Andheri Sub-way and came to know that in said Masjid 10 foreigners of Kyrgyz Republic have arrived. The informant inquired with them and obtained necessary information. During inquiry he found that their Passports and VISA are valid and they have come from Delhi Markaz on 22.02.2020. The informant has stated that the said persons visited various places and persons and spread the infection. He has further stated that they have violated the lock-down norms and infringed the orders of Police Commissioner. He has requested for taking action against them.

3 Upon receipt of complaint, the officer-in-charge of D. N. Nagar Police Station has taken cognizance and registered above mentioned offences against accused persons. The Investigating Officer PI Rajendra Vishwanath Rane initiated investigation and filed charge-sheet in Court adding sections 307, 304(2) of I. P. C. alongwith above mentioned offences. The accused persons were ordered to be released on PR Bond of Rs.25,000/- each by Hon'ble Sessions Court vide ABA No.455/2020.

4 The backdrop of this matter which gave rise to present situation is essential to mention as under -

Initially, on 17.06.2020 charge-sheet came to be filed by D. N. Nagar police station in this court for the offences under section 307, 304(2), 188, 269, 270 of I. P. C. alongwith section 51(b) of National Disaster Act, section 14 of Foreigners Act, section 3 and 4 of Epidemic Disease Act and section 37(3) r/w 135 of Bombay Police Act against accused persons. As the offences were exclusively triable by Hon'ble Sessions court therefore on same date i.e. 17.06.2020 the case came to be committed to Hon'ble Sessions Court. Lateron the Hon'ble Sessions Court discharged accused persons of the offences 307 and 304(2) of I. P. C. and returned the case to this Court for trial in accordance with law by order dtd.21.09.2020. The record of case came to be received on 25.09.2020. Thereafter, a discharge application under section 239 of Cr. P. C. came to be filed before this Court on 25.09.2020. The prosecution responded the application on the same day with it's say on backside of application. On 28.09.2020, the arguments of Mr. Amin Solkar, the Ld. Senior Advocate for the accused and Mr. P. S. Sapkale, the Ld. APP for the State came to be heard. On 01.10.2020, the application for discharge came to be turned down.

5 On 07.10.2020, the accused persons appeared before this Court and requested for framing of charge. As a sequel of order on discharge application and as per judicial ratio laid down by the Hon'ble Bombay High Court in Cri. Appln. No.453/2020, **HLA**

SHWE and Anr. Vs. State of Maharashtra, the charge for section 135 of Bombay Police Act came to be framed as no case for offences under sections 188, 269, 270 of I. P. C. and section 14 of Foreigners Act and section 51 of Disaster Management Act and section 3 of The Epidemic Act were made out. Accordingly, charge came to be framed at Exh.9. The accused persons abjured their guilt and claimed to be tried as per their plea on record.

6 Meantime, the accused persons filed an application for expediting of case at Exh.16. The prosecution has responded that necessary orders in the interest of justice be passed in purview of SOP of Hon'ble High Court. Thereafter, the accused persons approached Hon'ble Principal Judge, City Civil and Sessions Judge, Dindoshi for directions to expedite the trial. The Hon'ble Sessions Court called the status report from this Court vide communication bearing outward No.4832/2020 dtd.13.10.2020. Lateron, on 16.10.2020, rejecting the application of accused persons the Hon'ble Additional Principal Judge, City Civil and Sessions Court, Dindoshi directed this Court to hear the case as per SOP and circular issued by Hon'ble Bombay High Court on 15.09.2020. Meantime, a communication vide outward No.2352/2020 from the office of Hon'ble CMM, Mumbai dtd.12.10.2020 came to be received in which at point no.16, it was instructed to speed up the matters in which the parties/Advocates are ready to conduct the matters by taking proper care. On 17.10.2020, the Ld. APP, Ld. Defence Advocate, prosecution witnesses and accused remained

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present in the Court and uniformly consented for taking up of hearing. Keeping in view their mutual consent the evidences of prosecution witnesses came to be recorded through video conferencing. After recording of prosecution evidence, the prosecution as well as defence furnished their written notes of arguments vide Exh.24 and 25 respectively and thus, matter is taken for judgment.

7 From the case of prosecution and evidence on record following points arose for my determination. I have given my findings to each of them for the reasons undermentioned -

<u>Sr. No.</u>	<u>Points for determination</u>	<u>Findings</u>
1	Whether prosecution proves that on 05.04.2020 the accused persons were found at Tayyaba Masjid in front of Andheri Sub-way, Andheri (W), Mumbai in contravention of section 37(3) of Bombay Police Act punishable under section 135 of Bombay Police Act ?	In Negative
2	What order ?	As per final order.

REASONS

8 Noticeably, the case of prosecution consists of only two witnesses as per charge-sheet. Accordingly, in order to prove the guilt of the accused, prosecution has examined its both witnesses. The evidence of PW1 PSI Mr. Durgesh Harishchandra Salunkhe at Exh. 17 and P. W. No.2 PI Rajendra Vishwanath Rane at Exh.19

came to be recorded through video conferencing. I have recorded the statement of accused persons under section 313 of Cr. P. C. at Exh.23. They have denied the evidence putforth by the prosecution. I have perused the written notes of arguments furnished by Ld. APP Mr. P. S. Sapkale at Exh.24. I have also perused the written notes of arguments furnished by Mr. A. N. Shaikh, the Ld. Advocate for accused persons at Exh.25. Additionally, he has annexed the order copy of discharge passed by the Metropolitan Magistrate, 12th Court, Bandra, Mumbai and JMFC, Thane in which accused of similar offences have discharged. The Ld. Advocate for accused has also placed his reliance on judicial ratio laid down by Hon'ble Bombay High Court in **Writ Petition No.548/2020 Konan Kodio Ganstone and Anr Vs. State of Maharashtra and Cri. Appln. No. 453/2020 HLA SHWE & Anr. Vs. State of Maharashtra**. I have given thoughtful consideration to the submissions advanced by both sides in addition of their written notes of arguments.

9 At the very outset, I would like to state that accused are charged for the offence under section 37(3) r/w 135 of Bombay Police Act, therefore, it appears essential to reproduce the section 37(3) of Bombay Police Act as under -

37. Power to prohibit certain for prevention of disorder- (1)
The Commissioner and the District Magistrate in areas under their respective charges, may whenever and for such time as he shall consider necessary for the preservation of public peace or public safety by a notification publicly promulgated or addressed to individuals, prohibit at any town, village or place or in the vicinity of any such town, village or place-

(a) the carrying of arms, cudgels, swords, spears, bludgeons, guns, knives, sticks or lathis, or any other article, which is capable of being used for causing physical violence;

(b) the carrying of any corrosive substance or of explosives;

(c) the carrying, collection and preparation of stones or other missiles or instruments or means of a casting or impelling missiles;(d) the exhibition of persons or corpses of figures or effigies thereof;

(e) the public utterance of cries, singing of songs, playing of musk;(f) delivery of harangues, the use of gestures or mimetic representations, and the preparation, exhibition or dissemination of pictures, symbols, placards or any other object or thing which may in the opinion of such authority offend against decency of morality or undermine the security of or tend to overthrow the State.

(2) If any person goes armed with any such article or carries any corrosive substance or explosive or missile in contravention of such prohibition, he shall be liable to be disarmed or the corrosive substance or explosive missile shall be liable to be seized from him by any Police officer, and the article, corrosive substance, explosive or missile so seized shall be forfeited to the State Government.

(3) The authority empowered under sub-section (1) may also by order in writing prohibit any assembly or procession whenever and for so long as it considers such prohibition to be necessary for the preservation of the public order:

Provided that no such prohibition shall remain in force for more than fifteen days without the sanction of the State Government.

(4) The authority empowered under sub-section (1) may also by public notice temporarily reserve for any public purpose any sheet or public place and prohibit persons from entering the area so reserved, except under such conditions as may be prescribed by such authority.

10 Keeping in view the above provisions of law, let I revert to the evidence furnished by prosecution. Firstly, the PW1 PSI Durgesh, informant of this case has deposed that on 05.04.2020 he was on duty and he came to know that accused persons have arrived in their jurisdiction and are meeting with people and visiting various mosques despite of imposition of lock-down. He

deposed that therefore he lodged FIR against them vide Exh.18. He has also deposed that accused persons violated the order of Police Commissioner of Mumbai. In cross-examination by accused, PW1 PSI Durgesh has admitted that he has not noticed accused persons violating the lock-down or curfew. He has also deposed that he had not entered into mosque and accused voluntarily came down on his call.

11 The next, the prosecution examined PW2 PI Rajendra Vishwanath Rane, the Investigating Officer of this case. He has deposed that since last two years he is holding charge of law and order within jurisdiction of D. N. Nagar Police Station. He deposed that during investigation he obtained copies of District Collector, Home Ministry and Commissioner of Police and other authorities vide Exh.20. He deposed that accused were released on Anticipatory Bail and after completion of investigation, he filed charge-sheet. He deposed that accused persons have committed the contravention of order of Police Commissioner of Mumbai. In cross-examination by accused he has admitted that he has not prepared Spot Panchanama and not recorded statement of Trustee of Masjid and adjacent residents. He has deposed that nobody have informed him that accused committed contravention of lock-down. He has admitted that nobody is harm or died due to accused persons. He has deposed that he has not inquired about visits of accused persons within jurisdiction of D. N. Nagar Police Station.

12 From the combined perusal of evidences of Police officials of prosecution, it is apparent that both of them have deposed that accused have not committed violation of lock-down or curfew. Additionally, they have deposed that they neither entered into mosque and nor noticed accused contravening the lock-down norms. Ultimately, the prosecution witnesses themselves have clarified the position of accused persons. No doubt, prosecution has annexed bulky documents on record in respect of lock-down and government directions in the form of order dtd.20.03.2020 issued by DC (Operations), Mumbai, circular dtd.31.03.2020 issued by Spl. Police Inspector, wireless messages issued by DGP, MS, Mumbai, notification dtd.14.03.2020 issued by Principal Secretary to Government, amendment order No. MGF/A/2916, dtd.20.03.2020 issued by BMC, Notifications dtd.13.03.2020, 14.03.2020 issued by Principal Secretary To Government, order dtd.24.03.2020 issued from Member Secretary, NDMA, Notification dtd.13.03.2020 issued by Principal Secretary to Government, Notification dtd.23.03.2020 issued by Chief Secretary Government of Maharashtra, order dtd.24.03.2020 issued by Home Secretary of Ministry of Home Affairs, copies of Office Memorandums dtd.05.03.2020, Guidelines for home quarantine issued by Ministry of Health & Family Welfare (EMR Division). It indicates that documentary the case of prosecution is considerable whereas orally the witnesses have not supported case of prosecution in its true sense.

13 The accused persons are charged for the offence under section 37(3) r/w 135 of Bombay Police Act. Admittedly, accused persons are foreigners, therefore, they are not acquainted with the local language as well as law of the State. The basic principle of infringement of section 37 of Bombay Police Act is based upon publicly promulgation of orders. In that regard I quote the judicial ratio laid down by Hon'ble Bombay High Court in the case of - **Ramesh Mulchand Ramani Vs. The State of Maharashtra, reported in 1980 Bom CR 822** in which Hon'ble Bombay High Court held that for establishing offence under section 37 of Bombay Police Act it is incumbent upon prosecution to show that the said order was promulgated in sense that it was published and also displayed in prominent places in the city and in absence of this, accused cannot be found guilty of any offence of breach of such order. Similarly, in another case of - **State of Maharashtra Vs. George Fernandes, reported in 1985(1) Bom. CR 696** the Hon'ble Bombay High Court has held that the publicly promulgation of order as contemplated by section 163 of Bombay Police Act is essential to constitute the offence. In purview of above judicial ratios and evidence on record, it is transparent that the order in question was not promulgated to accused persons individually.

14 Keeping in view the above judicial ratios, evidence on record and facts and circumstances of the matter, it is clear that the order in question was neither publicly promulgated nor brought into

notice of the accused persons. Furthermore, the prosecution witnesses have clarified that accused have not violated the norms of lock-down and order of Police Commissioner. Their versions are contrary to the documentary evidence on record. Furthermore, the prosecution has not even carried out preparation of Panchanama and never recorded statement of any other independent witness. Thus, there is no legal evidence furnished by prosecution in support of charge.

15 The brief survey of prosecution evidence transpires that none of examined witnesses have an occasion to see the accused persons together in the form of assembly. Per contra the prosecution witnesses admitted that they have not seen accused persons contravening any directions or order issued by authority. The said witnesses were also not found in position to tell where and how the accused person were residing at the time of alleged offence. Thus there is no iota of evidence with prosecution to show any contravention of order by accused persons beyond all shadow of doubt. During imposition of lock down and their ultimate shelter in mosque or nearby will not render them responsible for such contravention. There is no legal evidence adduced by prosecution to show that accused persons infringed the notification lawfully made under section 37 of Bombay Police Act. Hence by following the judicial ratios laid down by Hon'ble Bombay High Court in the cases of - **Konan Kodio Ganstone and Anr Vs. State of Maharashtra in Writ Petition No.548/2020 and HLA SHWE & Anr.**

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Vs. State of Maharashtra, in Cri. Appln. No. 453/2020, and lack of evidence in support of charge, I am satisfied to answer my finding to point no.1 in negative and further satisfied to acquit the accused persons through following order :-

ORDER

i All the above named accused nos.1 to 10 are acquitted of the offence punishable under sections 37(3) r/w 135 of the Bombay Police Act vide Sec. 248 (1) of the Code of Criminal Procedure.

ii Bail bonds of all the accused stand cancelled.

iii All the accused shall furnish bonds of Rs.10,000/- by each under section 437(A) of the Code of Criminal Procedure.

Dt. 19.10.2020.

(R. R. Khan)
Metropolitan Magistrate,
10th Court, Andheri, Mumbai.

Sat.

Dictated on : 19.10.2020.
Transcribed on : 19.10.2020.
Signed on : 19.10.2020.