

IN THE COURT OF MS. NEETU SHARMA ADDITIONAL
CHIEF JUDICIAL MAGISTRATE-01, TIS HAZARI COURTS,
DELHI.

STATE Vs. REKHA & ORS
FIR No. 171/2024
PS: Pahar Ganj
U/s 188/294/34 IPC & 28/112 DP Act

Date of Institution of case : 28.01.2025

Date of Judgment reserved : 29.01.2025

Date on which judgment pronounced : 04.02.2025

JUDGMENT

1. Cr. Case No. : 881/2025
2. Date of commission of offence: 03.03.2024
3. Name of complainant : **SI DHARMENDER**
No. D-3901, PS-
Pahar Ganj, Delhi.
4. Name and address of accused : (1) **REKHA** [REDACTED]
[REDACTED]
(2) **NISHA** [REDACTED]
[REDACTED]
(3) **SHEETAL** [REDACTED]
[REDACTED]
(4) **PRIYAJILL** [REDACTED]
[REDACTED]
(5) **ANJALI** [REDACTED]
[REDACTED]

(6) SONA [REDACTED]

(7) ISHA [REDACTED]

(8) SANDEEP VERMA
[REDACTED]

5. Offence complained of or proved : U/s 188/294/34 IPC & 28/112 DP Act
6. Plea of accused : Pleaded not guilty
7. Final Order : **ACQUITTED**

1. This judgment will dispose a case instituted on police report in respect of FIR No. 171 of the year 2024.

FACTUAL SCENARIO:

2. Case as pleaded and as argued by the prosecution is that on 03.03.2024, at around 12:30 AM, at Jacks Bar and Live Music, Opposite Imperial Cinema Rajguru Road, Delhi within the jurisdiction of PS: Pahar Ganj, accused persons in furtherance of their common intention did an obscene act i.e. obscene dance at bar which caused annoyance to the public persons present at bar and thereby accused persons committed an offence punishable under Section 294 IPC. Prosecution has further claimed that Sandeep Verma being the Manager / care taker of the above said

bar failed to maintain proper functioning of CCTV camera installed at the said bar which is in violation of order notification no. 150-200/ACP/Paharganj dated 09.02.2024 Ex. A4, promulgated under Section 144 of Cr.PC by ACP, Pahar Ganj, Delhi and without following the proper guidelines of license issued by the Government and thereby he committed an offence punishable U/s 188 IPC & 28/112 DP Act. Hence, the instant FIR was registered against accused persons.

PROCEEDINGS IN THE CASE:

3. Police investigated the matter and filed a chargesheet for offences punishable under Section 188/294/34 IPC and 28/112 DP Act. When the court took cognizance and served notice explaining the accusation, accused persons pleaded not guilty and claimed trial. However, under Section-294 CrPC, the accused accepted the endorsement on rukka, registration of FIR, certificate under Section 65 (B) of Indian Evidence Act and notification.

4. For the aforesaid offences, prosecution examined PW1 SI Dharmender / IO, PW2 Dinesh and PW3 Dhruv. After conclusion of prosecution evidence, incriminating circumstances were put to the accused and they denied everything. They claimed that witness was interested and they were falsely implicated. They however chosen not to lead any evidence in defence.

5. Ld. APP for the state and Ld. Counsel for accused advanced their oral arguments. This judgement shall dispose of the case.

BASIS OF OFFENCE:

6. Prosecution is claiming to things: firstly that the accused persons did an obscene act which caused annoyance to the public and secondly that a notification was violated by not installing cctv system. Section-294 IPC punishes for obscene act and it reads as under:

“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 which may extend to one thousand rupees, or with both”.

7. Aforesaid says that if a person does any obscene act in public place and it annoys the other, the same will be punished. We have to see if the prosecution has been able to establish this or not.

8. Prosecution is relying on the testimony of SI Dharmender. He claims that he was on patrolling duty and when he entered the

Bar, he saw some girls were dancing on obscene songs wearing small clothes.

9. Now, neither wearing small clothes is a crime nor dancing on songs can be punished irrespective of whether such dance is done in public. It is only when the dance becomes annoying to other than the dancer can be punished. SI Dharmender nowhere claims that the dance was annoying any other person. For this, prosecution examined Dinesh and Dhruv. They however states that they had gone for enjoyment and that they did not know anything about this case. Ld. APP for the state cross examined the witness but they denied everything. Prosecution has not been able to point out as to why this witnesses will depose falsely. It is clear that the police concocted a story but could not find support from public. In such circumstances, even if we accept the claim of SI Dharmender, the same will not establish the ingredient of the offence.

10. However, PW1 SI Dharmender can hardly be relied upon. He has not produced any duty roster or DD entry to show that actually he was on patrolling at the relevant point of time and that too in the concerned area. A police officer who is on duty can leave the police station only by way of DD entry and not otherwise. Since, a documentary proof is bound to exist for showing the availability of PW1 in the area, the oral claim cannot be allowed to be accepted when he has not brought such a record.

11. Further, despite the spot being a public place, neither PW1 SI Dharmender joined any public person with the investigation. They claim to have asked some public persons to join the proceedings but they refused. Now, the area concerned is not such a place where only customers were available. There would have been shops/house in which several persons would be available. Nothing was prohibiting the police from asking persons of shops/houses, atleast they could not have left without giving names & address. Police did not do so. As far as customers are concerned, the police could have taken action against those persons who refused. Section-65 of Delhi Police Act clearly says that every person is bound to comply with the directions of police and if he refuses, he may be produced before a Magistrate. Police witnesses nowhere claim that they ever made any such effort. Clearly, they are not reliable witnesses and appear to have concocted a story.

12. The other offence projected by the prosecution is under Section 188 IPC in relation to violation of a notification issue by ACP. Notification was issued under Section 144 Cr.PC thereby requiring the owners of some establishments to install and properly maintain cctv system. We have to see if there is any violation of such notification or not.

13. Hon'ble Delhi High Court in **Bhoop Singh Tyagi vs State, 2002 SCC Online Del 277** while dealing similar provision under

Section 188 IPC, observed that in order to secure conviction of the accused, it is incumbent upon the prosecution to prove that (i) there was an order promulgated by a public servant, (ii) such public servant was lawfully empowered to promulgate such order, (iii) accused necessarily had the knowledge of such order directing them to abstain from an act or to take certain order with certain property in their possession or under their management, (iv) accused have disobeyed the order having its knowledge, (v) such disobedience caused or tended to cause (a) obstruction, annoyance or injury or risk of it to any person lawfully employed or (b) danger to human life, health and safety.

14. In the present case, prosecution has not been able to produce any evidence to show that the notification was ever published or that accused had actual knowledge of the aforesaid order promulgated by the ACP concerned. prosecution has also failed to produce copy of any newspaper etc. wherein such order may have been published. Prosecution also failed to mention the name of the newspaper and date of publication of order in question. It has not even produced any photographs of the said order affixed on any notice board of any of the offices mentioned in the order of the ACP. Thus, there is no evidence produced by the prosecution to show that the notification in question was ever published in any newspaper, affixed on notice boards of any of the offices specified in the order or given any publicity in the

general public on radio or T.V. Accordingly, presumption of knowledge of the notification cannot be attributed to the accused.

15. Further, in this case, complainant and IO both are same person. Although there is no rule that when the complainant and IO are same person, the story of the prosecution is to be disregarded. However, the Court should proceed with such matter with due caution. Here in the present case, even if we ignore this, prosecution sole reliance on the testimony of complainant / IO does not show any link between the offence and the accused.

16. Clearly, prosecution has failed to prove one of the essential ingredients that the accused Sandeep Verma had the knowledge of such order and despite that he disobeyed the directions. Section 294 IPC therefore cannot be invoked.

17. Further, in order to bring home the guilt of the accused Sandeep Verma qua the offence U/s 28/112 DP Act, there is no specific allegation that has been furnished by the prosecution on record of the court. No ocular or documentary evidence has been furnished to show, that the restaurant and bar in question was running without proper license or was running in contravention to the provisions and the guidelines issued by the government in this regard. Further no evidence has been led by the prosecution with regard to what were the terms and conditions that were to be

followed and were thereby flouted by the accused person. Therefore, in the absence of any specific evidence being adduced in this regard, the benefit of doubt goes in favour of accused as there is settled proposition of law, that where two views possible one favouring the accused should be adopted.

RESULT:

18. In view of the above, it is clear that the prosecution has failed to prove that any offence was committed or that the accused were involved in any offence as projected by the prosecution in this case. Accordingly, accused persons are acquitted of offences in the present case.

*Announced in the open Court today
i.e. 04.02.2025*

(NEETU SHARMA)
ACJM-01(CENTRAL)
TIS HAZARI COURTS/ DELHI