

M.A. Nasir Vs The Andaman and Nicobar Administration

Court: Calcutta High Court (Port Blair Bench)

Date of Decision: March 10, 2014

Acts Referred: Constitution of India, 1950 " Article 226
Criminal Procedure Code, 1973 (CrPC) " Section 438
Penal Code, 1860 (IPC) " Section 420, 467, 468, 471, 474

Citation: (2014) 4 WBLR 226

Hon'ble Judges: P. Mandal, J

Bench: Single Bench

Advocate: Tabraivz and K. Vijay Kumar, Advocate for the Appellant; S.K. Mandal, Advocate for the Respondent

Judgement

Prasenjit Mandal, J.

Heard learned Advocates of both the sides over the matter. This is an application under Article 226 of the

Constitution of India and is filed praying for the following reliefs:--

(A) A writ of mandamus and/or writ in the nature thereof commanding the respondent authorities and each one of them:

(i) To do and to proceed in accordance with law.

(ii) To issue an order directing the Chief Fire Officer to consider the case of the petitioners and to issue the fire clearance certificate in respect of

entire building;

(iii) To quash and/or set aside the paper publication made by the respondent No. 2.

(iv) To direct the Station House Officer, Police Station Central Crime Station, Port Blair (respondent No. 4 herein) to provide copies of such

documents, to the Chief Fire Officer, as may be necessary for consideration of the case of the petitioner.

(B) A writ of certiorari be issued commanding the respondent authorities and each one of them to transmit all the records relating to the present

proceeding for the purpose of giving conscionable justice to the present case and also for the purpose of passing appropriate orders in this regard

and or quashing the order, if any, affecting the interest of the petitioner.

(C) A rule NISI in terms of prayers A & B hereinabove.

(D) An interim order restraining the respondents in particular the respondent No. 2 from publishing any such further notice.

(E) To pass any other writ(s) to issue order(s) in the interest of justice and/or pass such other order(s) and/or direction(s) as Your Lordship may

deem fit and proper;

2. In the instant case the petitioner No. 1 is the father of the petitioner No. 2 and he is running a hotel at the premises bearing Survey No. 224/2 at

Haddo, Port Blair in the name and style ""Hotel Hill Top International"".

3. The petitioner No. 2 being the son of the petitioner No. 1 wanted to run a ""7D Fun Show"". In order to run the said 7D Fun Show the petitioner

No. 2 was required to observe many formalities such as permission/licence, fire clearance certificate etc. When the petitioner No. 2 filed the

application supported by the said certificates, on inspection it was found that the fire clearance certificate obtained by the petitioner from the Chief

Fire Officer was a forged one and accordingly an FIR was lodged against the petitioner No. 2 under various sections of the IPC and the said

criminal case is still pending.

4. The petitioner No. 2 moved an application under Section 438 of the Code of Criminal Procedure for anticipatory bail before the learned

Sessions Judge, Port Blair and he was granted the anticipatory bail upon certain terms and conditions.

5. Thereafter, a committee was formed to verify and ascertain as to whether the ""7D Fun Show"" comes under the provisions of Cinematographic

Act or not and the ultimate conclusion of the Committee was that the said ""7D Fun Show"" did not come within the purview of the term Cinema and

as such the matter did not come within provisions of the Cinematographic Act, 1952, but it came under the provisions of Section 6 of the A & N

Islands Entertainment Tax Regulation, 1951. According to the said Act of 1951, there is a penal provision for nonpayment of tax etc. Ultimately,

the Assistant Commissioner (HQ) published a report in the newspapers for stopping of the said ""7D Fun Show"" on the ground that the said show

was being run in violation of the norms relating to safety measurements, particularly, the safety from fire etc. and any person watching the said show

might suffer any mishap.

6. The Port Blair Municipal authorities also found that the construction of the building of the aforesaid premises was unauthorized to some extent.

But it was observed by the APWD that the premises might be utilized for running ""7D Fun Show"" with a sitting capacity of 40 persons and as such

the allegation of the Assistant Commissioner (HQ) had no basis at all. The petitioner No. 2 is not in a position to run the said ""7D Fun Show

unless the clearance is obtained from the concerned authorities and as such he prayed for return of the papers seized from him in connection with

the criminal case referred to above. He also filed a writ petition before the Hon'ble Court, Circuit Bench at Port Blair seeking for a direction upon

the authorities not to interfere with the business of the petitioners. That application was disposed of holding that no mandamus should be issued

upon the respondent authorities as no restraint order had been passed against the petitioner. Under such circumstances, this application has been

filed for the reliefs already stated.

7. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that an FIR had been lodged against the

petitioner No. 2 under Section 467/ 468/ 471/ 474/ 475/ 420 of the IPC by the Assistant Commissioner (HQ) on the allegation that the petitioner

No. 2 filed forged documents of fire clearance certificate and violation of construction of the building as per letter of the Port Blair Municipal

Council and as such the ""7D Fun Show"" had been stopped for the safety of the people watching the show.

8. From Annexure P-11 at page No. 46 of the application it appears that the Assistant Commissioner (HQ) issued a notice dated February 01,

2014 indicating that the said ""7D Fun Show"" is functioning without any licence and violating the norms. For convenience, the said notice is quoted

below:--

No. 2-16/LS/2013/PF/930

OFFICE OF THE DEPUTY COMMISSIONER

DISTRICT OF SOUTH ANDAMAN

Port Blair, dated the 1st February, 2014

NOTICE

General public is hereby informed that 7D Fun Show, Haddo, Opposite Van Sadan is functioning without any licence from this Department. The

show is running in violation of the norms. As this Cinema Hall has not taken clearance from the Fire Department which can endanger the life of

people going to watch the show. The safety of the people can be in danger in case of any mishap.

General Public is warned not to go and watch this show in the interest of their safety.

Sd./-

Assistant Commissioner(HQ)

For Deputy Commissioner(SA)

9. The Chief Fire Officer has also intimated the petitioners that the inspection report in respect of ""Hotel Hill Top International"" and ""7D Fun

Show"" may not be possible at the stage as the documents had been seized by P.S. CCS for investigation vide Annexure P-12 at page No. 48.

10. The Criminal case under investigation is now pending and it is the specific allegation that a forged fire clearance certificate had been filed by the

petitioner No. 2 for running the said ""7D Fun Show"" and the Municipality had also intimated that an unauthorized construction had been done. The

matter is under investigation. In such circumstances, if the prayer of the petitioners for sending copies of those documents to the Chief Fire Officer

is allowed it will be nothing but to support the action of the petitioner No. 2 as to filing the fabricated document to run the business. Similarly, so

long as the said criminal case is pending, the Chief Fire Officer cannot be directed to consider the case of the petitioners and to issue the fire

clearance certificate in respect of the entire buildings. So, unless and until the criminal case referred to earlier is disposed of finally, in my view, the

petitioners cannot get any of the reliefs as sought for in the writ application. In my view, this application is totally devoid of merits. So the

application is dismissed. However, there will be no order as to costs.