criminal jurisprudence that when two view emerges from facts, the benefit of doubt belongs to accused. Therefore, we hold that the prosecution failed to establish the leveled charges beyond the reasonable doubt.

18. In the result, the judgment and order of trial Court does not sustain in the eyes of law, consequently it requires reversal by allowing appeal. Accordingly, we allow the appeal, set aside the judgment and order of conviction dated 06/10/2015 passed by the Additional Sessions Judge, Wardha, in Sessions Case No.152 of 2013. The appellant/accused, viz. Mangal @ Mangesh Husen Meshram stands acquitted of the offence punishable under Sections 376, 323 of the Indian Penal Code and he be released forthwith from Jail, if not required in any other offence. The amount of fine, if deposited, be refunded to the accused, seized muddemal property being worthless be destroyed on expiry of period of appeal and R. & P. be sent back to the Trial Court.

The fee payable to the appointed Counsel is quantified at Rs. 5000/-

Result:- Appeal allowed.

ABC 2019 (I) 224 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(Mridula Bhatkar, J.)
Criminal Writ Petition No. 2981 of 2016
Decided on 19 November, 2018

ANJALI RAJANISH NIRMAL ***- Petitioner(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered:- ***(A) Code of Criminal Procedure, 1973 — Section 239 — Discharge — Bombay Prohibition Act, 1942 — Sections 65(E), 81, 82 & 83 — Bombay Police Act, 1951 — Sections 33 (w) & 131(5) — Raid in the Hotel premises — Breach of condition — Application of discharge by owner of premises — Allegation of indirect participation — Held, no material to arrive at a conclusion that the petitioner/accused was responsible for breach of the conditions of the permit to run the Pub and sell liquor — Accused***

nos. 1 to 4, were licensee and actually running the pub — were de-facto in possession of the suit premises, having control over that premises on that night — No indirect participation in the offence by the petitioner — Discharged. (Para 7)

(B) Jurisprudence — Tortious liability —Possession of immovable property — Criminal Law vis-à-vis Civil Law — Observation that "the licensor remains in actual possession of the premises and no right of any kind whatsoever, in the immovable property is transferred in favour of the licensee" — Held, This observation may be useful in the civil cases to impose tortious liability — In the criminal law, it is essential for the prosecution to verify what offence is committed by the accused. (Para 7)

Facts:- *The petitioner was the owner of the premises of a hotel run by a company and accused nos. 1 to 4 were Directors of the said company. As per the case the police raided the said Hotel premises and approximately 300 boys and girls were found shouting and dancing in drunken condition. The music was played on Disk Jockey . As per the case of the prosecution, though permit was given to sell the liquor in the name of one of the Directors of the company, but it was only upto 11 p.m. The raid was conducted at night at around 12 O'Clock and therefore, there was breach of the licence condition and so the offences under the relevant provisions of Bombay Prohibition Act and Bombay Police Act were registered. The petitioner moved an Application for discharge before the JMIC which was rejected and against which Revision Application was also dismissed. Hence, the Petition before the hon'ble Bombay High Court was filed. The court did not find any material against the petitioner to frame charge for the offences for which she was prosecuted. Application for discharge was allowed.*

Law of relief:- ***In the criminal law, it is essential for the prosecution to verify what offence is committed by the owner of the premises.***

Held:- Perused the orders passed by the learned Judicial Magistrate First Class, Pune and learned Additional Sessions Judge, Pune. The learned Judicial Magistrate First Class in paragraph 15 of the order has held that the applicant-accused no.7 had indirect participation and therefore, the accused no.7 cannot be discharged. The learned Additional Sessions Judge, in paragraph 8 of the order, has considered the law governing Lease and License Agreement and has stated that the licensor remains in actual possession of the premises and no right of any kind whatsoever, in the immovable

property is transferred in favour of the licensee. This observation and the view taken by both the Judges may be useful in the civil cases to impose tortious liability. However, in the criminal law, it is essential for the prosecution to verify what offence is committed by the accused. In the present case, no material is placed before me to arrive at a conclusion that the petitioner/accused was responsible for breach of the conditions of the permit to run the Pub and sell liquor. The record reveals that the accused nos. 1 to 4, who are licensee and actually running the pub were de-facto in possession of the suit premises and were having control over that premises on that night. I do not find any indirect participation in the offence by the petitioner. On perusal of the record before the Court and especially on going through the terms of the Agreement, I am of the view that there is no material against the petitioner to frame charge for the offences for which she is prosecuted. It is the case of discharge, hence the Application for discharge is allowed. The orders of the learned Judicial Magistrate First Class and learned Additional Sessions Court are set aside. (Para-7)

Counsel:- ***For Petitioner(s):*** *Mr. Manoj M. Gadkari, Adv.*
For Respondent(s): *Ms. Pallavi Dabholkar, Adv.*

JUDGMENT

MRIDULA BHATKAR, J.: - Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the judgment and order dated 5th August, 2015 passed by the learned Additional Sessions Judge, Pune in Criminal Revision Application No. 24 of 2015.

3. The petitioner is prosecuted for the offences punishable under section 65(E), 81, 82 and 83 of Bombay Prohibition Act, 1942 along with sections 33(w) and 131(5) of the Bombay Police Act, 1951 passed by the learned Judicial Magistrate First Class, 36th Court, Pune in Regular Criminal Case No. 1487 of 2013. The petitioner moved an Application for discharge from Regular Criminal Case No. 1487 of 2013, which is marked Exhibit 50. The said Application for discharge was rejected by order dated 8th November, 2014 by the learned 36th Judicial Magistrate First Class, Pune and against which Revision Application No. 24 of 2015 was filed by the petitioner. The said Revision Application was dismissed. Hence, this Petition.

4. The facts of the case, in brief, are as follows:

a The petitioner is the owner of the premises at Village Wagholi, Pune where Hotel Maya is run by Red Entertainment Service and accused nos. 1 to 4 are the Directors of the said company. The petitioner is made accused no. 7 in the case. On the night intervening 1st and 2nd September, 2012, the police raided the Hotel premises and **b** they found that approximately 300 boys and girls were found shouting and dancing in drunken condition. The music was played on Disk Jockey. As per the case of the prosecution, though permit was given to sell the liquor in the name of one of the Directors of Red Entertainment Services, i.e., accused no. 2, but it was only upto 11 **c** p.m. The raid was conducted at night at around 12 O'Clock and therefore, there was breach of the licence condition and so the offences under the relevant provisions of Bombay Prohibition Act, 1942 and Bombay Police Act, 1951 were registered.

5. The learned counsel for the petitioner submitted that the **d** petitioner admits the fact that she is the owner of the premises. The petitioner also admits that she has entered into Agreement of Lease and License with Red Entertainment & Services for a period from 1st November, 2011 till 30th September, 2016. The learned counsel pointed out the said Lease and License Agreement wherein in clause no. 8.1 a condition was specifically mentioned which states -

e

> "*The Licensee shall manage the Pub as per the provisions of law and should not commit breach of any of the rules and regulations applicable to such Pubs and shall also follow all the terms and conditions in respect of the licenses obtained for running the same*".

f The learned counsel submitted that immediately after raid, the petitioner/accused no. 7 has terminated the contract with Red Entertainment & Services and the said property is sold to some other person. He submitted that the petitioner is no way concerned with the breach of the terms of contract of license. The order passed by the learned Judicial Magistrate First Class, Pune and the learned **g** Additional Sessions Judge, Pune are not legal and hence, the orders are to be set aside.

6. Learned APP while defending the order passed by the learned Additional Sessions Judge and learned Judicial Magistrate **h** First Clas, Pune has submitted that the petitioner, being the owner of the premises, is supposed to have knowledge of the activities which are going on in the premises. She submitted that during the raid, the

police have noticed a clear breach of the terms and conditions of the license and hence, the FIR is lodged against the Directors of the Red Entertainment and Services and also against petitioner/accused no. 7.

7. Perused the orders passed by the learned Judicial Magistrate First Class, Pune and learned Additional Sessions Judge, Pune. The learned Judicial Magistrate First Class in paragraph 15 of the order has held that the applicant-accused no.7 had indirect participation and therefore, the accused no.7 cannot be discharged. The learned Additional Sessions Judge, in paragraph 8 of the order, has considered the law governing Lease and License Agreement and has stated that the licensor remains in actual possession of the premises and no right of any kind whatsoever, in the immovable property is transferred in favour of the licensee. This observation and the view taken by both the Judges may be useful in the civil cases to impose tortious liability. However, in the criminal law, it is essential for the prosecution to verify what offence is committed by the accused. In the present case, no material is placed before me to arrive at a conclusion that the petitioner/accused was responsible for breach of the conditions of the permit to run the Pub and sell liquor. The record reveals that the accused nos. 1 to 4, who are licensee and actually running the pub were de-facto in possession of the suit premises and were having control over that premises on that night. I do not find any indirect participation in the offence by the petitioner. On perusal of the record before the Court and especially on going through the terms of the Agreement, I am of the view that there is no material against the petitioner to frame charge for the offences for which she is prosecuted. It is the case of discharge, hence the Application for discharge is allowed. The orders of the learned Judicial Magistrate First Class and learned Additional Sessions Court are set aside.

7. Rule is made absolute on above terms.

8. Writ Petition is allowed.

Result:- Writ Petition allowed.