

Received on	: 09/09/2016
Registered on	: 09/09/2016
Decided on	: 02/05/2019
Duration	: YYMMDD
	02 07 23

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS,
WAI, AT WAI, DIST. SATARA
(Presided over by V.H.Chavan.)

Regular Criminal Case No.136/2016
Exh. No.

Dr. Khanderao Dharane, }
I/C Deputy Superintendent of Police, Wai }
Division, Wai, Dist. Satara. } --- **Complainant**

Versus

Subhash Kisan Vanjari, }
Age years., Occ.business. }
R/o Ravivar Peth, Wai }
Tal- Wai District- Satara. } --- **Accused**

Charge: **Contravention of Noise Pollution (Regulation and Control) Rules 2000 punishable under section 15 of Environment Protection Act 1986.**

Learned APP Smt. S.R.Jadhav for prosecution.
Learned Adv. Shri.S.B.Chavan for accused.

J U D G M E N T
(Delivered on 2nd May, 2019)

Accused stand prosecuted for the alleged offence of

contravention of Noise Pollution (Regulation and Control) Rules 2000 (hereinafter referred to as “The Noise Pollution Rules”) punishable under Section 15 of Environment Protection Act (“The Act”).

02. Filtering out unnecessary details, the prosecution version as unfolded by it, is as follows:-

It is the case of the complainant that he was the Deputy Superintendent of Police, Satara division, Satara. At that time he had additional charge of Wai Division. He was empowered under Noise Pollution Rules punishable under Section 15 of the Act as appropriate authority to file the complaint for contravention of the said Rules in the *Ganpati* Festival of the year 2015.

03. It is alleged that during the period of 17/09/2015 to 27/09/2015 there was *Ganpati* Festival. Some of the *Ganesh Mandals* were given permission to establish the idol of lord Ganesha. For that reason there was meeting of all the *Ganesh Mandals* and information in respect of noise pollution and provisions of noise pollution was given to officials of said *Ganesh Mandal*. They were also informed about the keeping the limit of sound at certain decibels and thereafter permission for establishing and dissolving was given to the all organizers.

04. It is the case of the complainant that during the said period anti noise pollution squad was appointed including PI Galande, Police Head Constable Ahirekar, J.P.Kulkarni and Nikam. It is alleged that on 27/09/2015 there was dissolution procession of lord Ganesha. Therefore, the said squad were patrolling. At about 20.28 pm at Mahavir Chouk, Wai they found that Bhoiraj Ganesh Mandal, Ravivar Peth, Wai set 7 stereo boxes in high Volume and committed noise pollution. Therefore, the said squad gave them understanding. Thereafter, the said squad measured the sound on the instrument of decibel meter from the distance of 30 feet from the said dolby

stereo. Three prints of the report were printed. The density of the noise was measured as 100.8. As per law in commercial area the limit of noise is 45.8. Accordingly, the panchnama was prepared.

05. It is alleged that due to the said noise pollution there was in convenience was caused to the persons residing in the said locality. Thereafter, the said dolby was seized.

06. After completion of the said procedure note was taken in the station diary, statements of squad members were recorded. Report was submitted to the S.D.P.O. Humbare. The said SDPO Humbare issued show cause notice to the said Ganesh mandal. However, no reply was filed within 60 days from the receipt. Therefore, the complainant has filed the present complaint.

07. In pursuance of summons accused No. 1 appeared before the court. In spite of sufficient opportunity police machinery failed to secure the presence of accused No.2. Therefore, by passing order below Exh.01 the trial was separated from the accused No.2 and proceeded further against accused No.1 only. After following the procedure charge for the offence punishable under section 15 of Environment Protection Act was framed below Exh.11. During the trial evidence of prosecution was recorded. Thereafter, statements under section 313 of Cr.PC. was recorded below Exhs.18.

08. On these facts of the case, following points arise for my determination and I record my findings thereon for the reasons stated below:

Sr. No.	Points	Findings
1	Does the complainant prove that on 27/09/2015 at about 20.28 p.m. Accused No.1 during the Ganpati Procession played the dolby sound at	

	high volume and more than limit prescribed by law thereby contravened the Noise Pollution (Regulation and Control) Rules 2000 punishable under Section 15 of Environment Protection Act.	...Not proved.
2	What order?	...As per final Order.

REASONS

09. The complainant has examined only one Panch witness Kamalakar Sonaba Kalokhe as PW 1 below Exh.13.

POINT NO. 1 :-

10. To prove the guilt of the accused complainant is required to prove that on 27/09/2015 at about 20.28 pm in the area of Mahavir Chouk, Wai during the Procession of Ganapati dissolution without following directions accused played the dolby more than noise level fixed by the law and thereby committed the offence. Accused No.1 is the President of said Ganesh Mandal.

11. Panch witness Kamalakar Sonaba Kalokhe supported the case of the prosecution and he proved the spot panchnama below Exh.14 and receipts below Exh.15 and Exh.16. However, in his cross-examination he admitted that other Ganesh Mandals were also have idol of lord Ganesha in one trally and dolby or amplifiers in other trally. Therefore, the sound of other dolbies were mixing with each other. He also admitted that the panchnama was on last date of Ganapti dissolution procession.

12. The learned advocate for accused argued that the machine was no calibrated. Secondly, the sound of other dolbies were mixing in each other and therefore, the sound level had gone high. He submits that therefore, the report shows the sound measured minimum and more than limit prescribed. No expert witness was examined by the prosecution. As per

his argument the investigation is required to carry out by appropriate authority of police. But in the present case Deputy S.P. only filed the complaint after receiving report from PI. Therefore, the procedure is irregular and it is fatal to the case of the prosecution.

13. It is further argued that as per section 3 of Environment Protection Act the competent authority was Deputy S.P. and he has to investigate the matter and file complaint after investigation. But since investigation is not carried out by Dy.S.P. the whole investigation is illegal and doubtful. He further argues that there is no proof to show that accused No.1 is the President of said Ganesh Mandal.

14. He further argued that on perusal of entire evidence of the prosecution inspite of sufficient opportunity police machinery failed to examine experts in the said squad, Investigating Officer and other independent witnesses. Secondly, it is admitted by panch witness that sound of dolbies were mixing in each other. No doubt the intention of legislature is very much clear and aims and object of the Act is to curb noise pollution which is at high level in the present case. But while considering the case of complainant and while holding accused responsible the complainant is required to prove his case beyond reasonable doubts. If there is some doubt certainly accused cannot be held guilty and benefit of doubt will go to the accused. Therefore, I record my finding as to point No.1 in the negative and in answer to point No.2 I pass the following order-

ORDER

1] Accused Subhash Kisan Vanjari is acquitted as per Section 248(1) of Cr.P.C for the offence in Contravention of Noise Pollution (Regulation and Control) Rules 2000 punishable under section 15 of Environment Protection Act 1986.

- 2] Bail bonds of accused stands cancelled.
- 3] In view of section 437-A of Cr.P.C. accused No.1 shall furnish P.B. of Rs.15,000/- with surety in the like amount to appear before the Hon'ble Appellate Court as and when the Appellate court issue notices to him in respect of any appeal or petition filed against the present Judgment.

(Dictated and pronounced in the open Court.)

Wai
2nd May, 2019

(V.H.Chavan.)
Judicial Magistrate, F.C.,
Wai.