

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 974 OF 2014

RAJENDRA CHINDHUJI PATIL AND ANOTHER
VERUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for the petitioners : Mr. C.R. Deshpande
APP for respondents : Mr. A.S. Shinde
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 18th NOVEMBER, 2015

P.C. :-

1. Mr. Deshpande, learned counsel for the petitioners submits that the petitioners have purchased the property out of block Nos. 31 and 31/1. Learned counsel submits that on or about 3.12.2013, the police Officer of Mohadi police station, District Dhule had entered the said premises, sealed it and locked the entire premises. Upon receipt of the notice under Section 160 of Code of Criminal Procedure, the petitioners got knowledge that the said property is sealed in connection with station diary entry No. 37, dated 1.12.2013. According to the learned counsel, the petitioners are not accused in any crime. Learned counsel submits that the petitioners had filed Misc. Criminal Application No. 901 of 2013 before the learned Chief Judicial Magistrate, Dhule seeking release of said property.

However, the said application is rejected by the Magistrate on the ground that the same is not maintainable under Section 457 in respect of immovable property. The petitioners also filed revision. The same is dismissed.

2. According to the learned counsel, the present petition is filed challenging the action of the officers of Mohadi police station, District Dhule sealing the said constructed premises on plot No.4. Learned counsel submits that the police authorities do not have any power to seal immovable property and they cannot take control of immovable property in any circumstances, which according to them, create suspicion of commission of any offence. Learned counsel relies upon the judgment of the Full Bench of this Court in the case of ***Sudhir Vasant Karnataki vs. State of Mharashtra and Ors.*** reported in 2011 ALL MR (Cri.) 96.

3. Learned counsel further submits that the petitioners had filed affidavit thereby undertaking that the petitioners would not use the property as a lodge unless and until their application for grant of permission is decided by the Collector.

4. Mr. Shinde, the learned A.P.P. submits that the property is involved in connection with serious offence. The police officers found

incriminating articles in the said premises, which they have seized. According to the learned A.P.P. the said property cannot be allowed to remain in possession of the petitioners. The same is required to be protected and safeguarded, as it is a place of commission of offence. Crime No. 10 of 2013 was registered wherein it was found that illegal activities have taken place at the premises in question. The learned A.P.P. further submits that it was found that the property was in possession of the present petitioners and it was involved in criminal activities.

5. We have considered the submissions canvassed by the learned counsel. If, the property is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, then the Magistrate, on receipt of information from police or otherwise, issue notice to the owner, occupier or any other person, in charge of the house to show cause as to why the same should not be attached. The same is as per Section 18 of Immoral Traffic (Prevention) Act 1956. Section 18(1) reads as under:-

“18 Closure of brothel and eviction of offenders from the premises.- (1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of [two hundred meters] of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on

their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders-

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

(b) directing that before letting it out during the period of one year [or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years,] immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate:

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein."

6. In the present case, it appears that the police authorities have sealed and attached the property in question. Under the said Act of

1956, it is only upon the order of the Magistrate, the same can be attached. In the present case, no such order passed by the Magistrate is placed on record. Even while deciding the application filed by the present petitioners under section 457 of Cr. P. C. before the Magistrate, it is nowhere pointed out that pursuant to any valid orders passed by the Magistrate, the authorities have attached and/or sealed the property in question.

7. Be that as it may, the procedure as contemplated under Section 18 of the said Act 1956 does not seem to have been adhered to. It is clear that the petitioners today do not have valid permission to run the lodge at the said place. The petitioners have filed undertaking before this Court thereby clearly accepting that they would not use the said property as a lodge unless and until their proceeding for grant of permission is decided. The said affidavit is accepted by the Court. The petitioners also do not appear to be accused in any crime.

8. Considering the aforesaid aspects of the matter, the action of police authorities sealing the property is not proper.

9. In the result, the action of the Sub Divisional Police Officer/Deputy Superintendent of Police, Dhule, District Dhule dated 3.12.2013 of sealing the property in the name of "*Sai Niwara Lodge*"

at plot No.4 out of Block Nos. 31/31/1 admeasuring 450 sq. meters in connection with crime No. 10 of 2013 is quashed and set aside.

10. The petitioners shall not use the said property as lodge unless and until the valid permission under the relevant provisions of statute is granted by the competent authority.

11. This order would not be an impediment for the authorities to take any further action in accordance with the provisions of law and statute.

12. Criminal writ petition accordingly stands disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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