

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3213 OF 2015

Mr. Popat Nivrutti Salve	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

Mr. Ganesh M. Mohite, Advocate for the petitioner.

Ms. A.A.Mane, APP, for the State.

Mr. Macchindra B. Chavan, Sr. P.I. Kolsewadi Police Station, Thane,
present.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 16th October, 2015.

P.C.

Heard respective counsel. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the owner of the premises i.e. Room No.40, 3rd floor, Hira Apartment Co-operative Housing Society, Hanuman Nagar, Kalyan (East), District Thane.

3. It is the case of the petitioner that he had given the said premises on leave and license to one Mr. Haider Ali Shaikh and his family for residential purpose. The agreement was renewed from time to time. That on 25.10.2013, the petitioner had no information or intimation that the residential premises are being used as a brothel by his tenants. He had not visited the said premises for collecting rent since the rent was being

deducted from the deposit amount which the tenants had given at the time of signing the leave and license agreement.

4. It appears from the records that one girl Ms.`X' had filed a report at D.N.Nagar Police Station on 25.10.2013, that she was brought to the said premises and was forced into prostitution rather she was ravished by three persons in the said room. The informant had given names of the accused persons and the accused are being prosecuted in Sessions Case No.11 of 2014 for the offences punishable under Sections 343, 376(5), 370 and 326 of Indian Penal Code and Sections 5 and 8 of the Immoral Traffic (Prevention) Act. The complainant had alleged that she was detained in the said premises for some time. The informant had shown the said premises to the investigating officer on 26.10.2013. A scene of offence panchnama was drawn and the said premises were sealed on 26.10.2013. Thereafter, the investigating officer had learnt that the petitioner happens to be the owner of the said premises and therefore, a notice was issued to the petitioner. The petitioner appeared before the investigating officer on 28.10.2013 and had informed that he had given the said premises on leave and license agreement and that he had no knowledge that it was being misused by Haider.

5. Perused the statement of the petitioner dated 20.10.2013. The petitioner was never informed that the investigating officer has sealed the room on 26.10.2013. No notice was issued to the owner of the premises. Today, the learned APP, upon instructions, from the investigating officer who is present in the Court, submits that no notice was issued to the petitioner. It is also submitted that the investigating officer had not taken permission from the Magistrate nor from the Assistant Commissioner of Police. It is apparent on the face of the record that there was non-compliance with Section 18 of the Immoral Traffic (Prevention) Act.

6. The learned APP, upon instructions, submits that the investigating officer himself was the Senior P.I. of the said police station. Without issuing notice or without seeking permission, the premises have been sealed for the last 2 years. Section 18 of Immoral Traffic (Prevention) Act, 1956 contemplates 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 metres] 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 incharge 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;”

7. The proviso to Section 18 of the PITA Act reads as under :-

“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.”

The powers are vested with the Magistrate to direct de-sealing of the said premises. In the present case, the premises were not sealed with the

permission of the Magistrate or consequent to any order that was passed by the Magistrate. It is pertinent to note that the present petitioner is not an accused in the said case. The statement dated 28.10.2013 recorded by the investigating officer clearly indicates that the petitioner had no knowledge that the said premises were being misused.

8. The petitioner was therefore, constrained to file an application before the Sessions Court at Kalyan seeking de-sealing of the premises and handing over the possession of house property. The learned Sessions Judge, by an order rejected the said application on the ground that the accused Haider is not yet arrested.

9. The learned APP, upon instructions, submits that Haider is not yet arrested. In any case, the learned Sessions Judge has ignored the mandatory provisions under Section 18 of the PITA Act. The learned APP submits that the investigating officer has clearly admitted that at the time of sealing, the officer had not seen the provisions of Sec. 18 of the PITA Act as it can be an error on the part of the investigating officer since he has categorically admitted that he was not diligent to see the provisions of Sec. 18 of the said Act. The provisions of Sec. 18 of the said Act are neither

brought to the notice of the learned Sessions Judge and hence the application has been wrongly rejected.

10. The learned counsel for the petitioner rightly submits that although it is an error on the part of the investigating officer, it has caused serious prejudice to the owner of the said premises and also created loss and humiliation to the owner. In view of this, the following order is passed :-

ORDER

- (i) The order dated 8.7.2015 passed by the learned Addl. Sessions Judge, Kalyan, deserves to be set aside, with a direction to the investigating officer to de-seal the premises i.e. Room No.40, Hira Apartment Co-op. Housing Society, Hanuman Nagar, Kalyan.
- (ii) The investigating officer shall record a panchnama to that effect and hand over the premises to the owner.
- (iii) The investigating officer shall take photographs of de-sealing the premises and see that there is no breach of peace at the time of de-sealing of the said premises.

(iv) The petitioner shall give an undertaking to the Sessions Court that the said premises will not be given on rent till conclusion of the trial and that he shall not create any third party interest till the conclusion of the trial. The undertaking shall also be given to the investigating officer at the time of recording the panchnama of de-sealing the premises.

(v) The investigating officer as well as the petitioner shall not cause any disturbance in the arrangement in the house nor articles shall be sealed or seized. Status quo shall be maintained as far as the articles in the house is concerned.

(vi) It is only that the petitioner will be put into possession of the said premises after he gives an undertaking that he will not create third party interest or induct any new tenant till the conclusion of the trial.

(vii) The investigating officer shall take photographs of the premises and a copy of the same shall be a part of the trial in Sessions Case No.11 of 2014.

Petition is allowed in the above terms. Rule is made absolute.

(SMT.SADHANA S.JADHAV, J.)