

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 840 OF 2015

Saira Hamiduddin Khan alias MaladasApplicant
V/s.
The State of MaharashtraRespondent

WITH
CRIMINAL APPLICATION NO. 805 OF 2015
IN
CRIMINAL APPLICATION NO. 840 OF 2015

Ajay Das ...Intervener

IN THE MATTER BETWEEN

Saira Hamiduddin Khan alias MaladasApplicant
V/s.
The State of MaharashtraRespondent

Ms. Anjali Patil a/w Mr. Arun Rajput for Applicant
Mrs. A. A. Mane APP for the State
Ms. Archana Sutar, A.P.I. Bandra Police Station, Mumbai

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : OCTOBER 8, 2015.

PC :

Mother of the applicant namely Saira Hamiduddin Khan @ Maladas has filed present application seeking relief of de-sealing room no. Room No. 19 (A), 1st Floor, Gazebo House, 133 Peerbhoy Building, Hill Road, Bandra, Mumbai in LAC No. 9 of 2009 registered at Bandra Police

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Station which was sealed under section 18 (2) of The Immoral Traffic (Prevention) Act, 1956 for a period of one year on 18/08/2015.

2) Officer A.P.I. Archana Sutar has filed an affidavit. Affidavit is taken on record and marked as article 'X' for the purpose of identification. Ms. Archana Sutar has specifically contended that pursuant to the orders passed by this Court on 30/09/2015, she had de-sealed the said premises which were sealed by her under a misconception. According to A.P.I. Sutar, intervener Shri. Goldie Sud was present along with his Advocate Shri. Prakash Wagh. After she had de-sealed the premises, she had informed Goldie Sud and his Advocate Prakash Wagh that she does not have authority to hand over the possession of the said premises to Goldie Sud, however, it was Advocate Shri. Prakash Wagh who had informed her that the very fact that Court had asked the officer to de-seal the premises would mean that the possession was to be handed over to Goldie Sud.

3) In fact, this Court had made it clear that this Court was not determining the title, ownership or possession of the said premises which were sealed erroneously nor this Court had determining the

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issues of title, ownership or possession of Room No. 19 (A), 1st Floor, Gazebo House, 133 Peerbhoy Building, Hill Road, Bandra (W) Mumbai at that time. It appears that Goldie Sud has challenged the order dated 01/10/2015 passed by this Court asking him to open the lock put by him at the time of de-sealing, before the Hon'ble Supreme Court. However, at least till today, no orders are passed in the said SLP. It is not known as to whether Mr. Goldie Sud has even received lodging number of the said SLP. Today, the very fact that revision application is allowed, order passed under section 18 of ITPA deserves to be quashed and set aside. This Court had observed that A.P.I. Archana Sutar had deliberately taken weekly of or that she had not informed this Court that she was on weekly of. Considering the averments made in the affidavit, no fault can be found with A.P.I. Sutar, it was incumbent upon her to inform senior P.I. or to the A.G.P. that at the time of de-sealing, the intervener and his Advocate have not only taken the possession of the said premises, but have also taken the photographs putting up their own seal and the photographs have been sent to Police Constable Shingade. Photographs also depict that Mr. Goldie Sud has put up a

notice on the said door that possession has been taken by Goldie Sud by the orders of the Court. In fact, no such order was passed by this Court on 30/09/2015. The fact that Goldie Sud has not opened the seal would amount to contempt of the orders of this court, however, prosecution is at liberty to file appropriate proceedings in that regard. Inadvertently A.P.I. has not informed the activities of Mr. Goldie Sud at the time of de-sealing either to the Government Pleader or to this Court, however, she has tendered her unconditional apology for the same and the same is accepted.

4) In view of the fact that main revision application is allowed and accused is acquitted, order of attachment under section 18 (2) of the ITPA passed by Metropolitan Magistrate, Special Court for ITPA, 54th Court, Mazgaon, Mumbai in C.C. No. 822/PW/2009 is hereby quashed and set aside.

5) Intervention application is heard, allowed and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)