

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3748 OF 2015

Abdul Razzak Mohd. Pambra. ... Petitioner.
Versus
The State of Maharashtra. ... Respondent.

Mr. Shirish Gupte, Sr. Counsel i/b. Mr. Santosh H. Chari, advocate
for Petitioner.

Mr. Arfan Sait, APP for State.

Mr. S.B. Waral, PI, Tardeo Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 20, 2015

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein was accused No. 11 in C.C. No. 19/PW/2013 wherein the Petitioner alongwith others was being prosecuted for offence punishable under section 3, 4, 5 and 7(1)(b) of the Prevention of Immoral Traffic Act, 1956. By Judgment and Order dated 17th August, 2015, the Petitioner herein has been acquitted of the charges levelled against him.

4 The Petitioner happens to be a lessee of the White House Bar and Restaurant. That he had given a conduct licence in favour of the original accused Nos. 1 to 10. That it was a specific case of the Petitioner that he was not visiting the said premises and that the original accused had misused the possession of the said restaurant without his knowledge.

5 After recording of substantive evidence, the learned Magistrate had rightly held that the present Petitioner had no knowledge about the activities of the original accused Nos. 2 to 10. The learned

Magistrate has passed Judgment and Order dated 17/8/2015. The Clause 13 of the operative order reads thus :

“13. As per Sec. 18(2) of Immoral Traffic Prevention Act the premises i.e. White house bar & Restaurant, Taddeo, Mumbai being used as brothel, where raid was effected, stands attached for a period of one year from the date of its actual attachment and closure of brother, for its improper use and convict, any other occupier or any other person in charge of the rooms stand evicted from the above said premises.”

Hence, this Writ Petition.

6 Learned Senior counsel appearing for the Petitioner submits that the learned Magistrate has failed to appreciate the proviso appended to Section 18 of the PITA, 1956 wherein it is contemplated as follows:

“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.

In the present case, it is apparent on the face of the record that the owner/lessee had no knowledge of the improper use of the premises. In view of this, order sealing the premises deserves to be quashed and set aside.

7 The learned Magistrate after passing the Judgment and Order has passed subsequent order that the operative order is stayed till the appeal period. In fact, the learned Magistrate would become functuous officio after the judgment is delivered.

8 Section 18(2) of the said Act contemplates that -

“18(2) A court convicting a person of any offence under Section 3 or Section 7 may pass orders under subsection (1), without further notice to such person to show cause as required in that sub-section.

9 That on 28/9/2015, the order by which the implementation of the order was stayed till appeal period, was not brought to the notice of this court and this Court had observed that it is made clear that the order of attachment under Section 18 of the Act has not been stayed. The officer pursuant to the said observations has sealed the premises on 30/9/2015. Since the applicant has been acquitted of all the charges levelled against him, the premises be de-sealed and the Petitioner be put in the possession of the said premises. The learned Senior Counsel for the Petitioner upon instructions submits that there are no civil proceedings pending before any other courts in respect of the title, ownership or possession of the said premises.

10 In any case, this Court is only considering the order under section 18(2) of the said Act and this Court has not determined the title, ownership or possession of the said premises. The Officer shall record panchanama and de-seal the said premises and put the Petitioner into possession. It is submitted on instructions that the

furniture and other articles in the said restaurant would be maintained as it is. The learned Senior Counsel upon instructions submits that he would not give the conducting licence in favour of any person for a period of one year. The Petitioner who is present in person is also willing to give an undertaking to that effect that he shall not create third party interest for a period of one year from today.

11 In view of the above observations, the Writ Petition is allowed. The Officer shall record panchanama and de-seal the said premises and put the Petitioner into possession. The Petitioner to give an undertaking to the effect that he shall not create third party interest for a period of one year from today.

12 Rule is made absolute in the above terms and Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)