

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1748 OF 2015

Dinesh Jivan Karki. ... Petitioner.
Versus
The State of Maharashtra. ... Respondent.

Mr. P.R. Dave, advocate for petitioner.

Mr. A.R. Patil, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 8, 2016

P.C.:

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

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

3 The Petitioner herein questions the correctness and validity of
the order dated 17/4/2015 passed by the Metropolitan Magistrate,
Special Court for ITPA, 54th Court at Mazgaon, Mumbai thereby

directing that the premises (brothel) at Raval Building, 2nd floor having electricity meter of consumer No. 867325003 at Kennedy Bridge, at Opera House, Mumbai shall stand attached/sealed for a period of one year from the date of its actual attachment and closure of brothel for its improper use. The learned Counsel for the Petitioner submits that the Petitioner is the occupant of the said premises for more than 10 years. On 4/2/2012 raid was conducted on the said premises on the basis of the secret information. The police had found two women Babybibbi Ahmed Shaikh and Jahari Parmeshwar Sab in the said premises and it was noticed that they were indulged in the offence of Immoral Trafficking. The said premises were being used as brothel. The said two females were tried for offence punishable under Section 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short "ITPA, 1956) in Criminal Case No. 782/PW/12 by Metropolitan Magistrate, Special Court for ITPA, 54th Court, Mazgaon, Mumbai by a Judgment and Order dated 17/4/2015. The present accused were convicted for the offence charged against them. The learned Magistrate on the same day exercised the power under

Section 18 of the ITPA, 1956. It is the said order, which is impugned by this Writ Petition.

3 The learned Counsel for the Petitioner vehemently submits that the Petitioner herein was residing as a tenant in the said premises. However, he failed to explain the relation with the accused in Criminal Case No. 782/PW/2012, who were found in the said premises on the date of the raid.

4 Section 3 of the said Act contemplates as follows :

“3. Punishment for keeping a brothel or allowing premises to be used as a brothel.—

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five

years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

[(2A)] For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.]

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.”

5 It is more than clear that the Petitioner had allowed the premises to be used as a brothel. The learned APP has placed on record the copy of the first information report on the basis of which Crime No. 157 of 2015 is registered at Dr. D.B. Marg Police Station against Prakash Chandi Chakravarti and others for the offence punishable under Section 370(3) read with Section 34 of the Indian

Penal Code and Section 3, 4, 5, 7(1)(b) of ITPA, 1956. It is pertinent to note that in the said information report also, premises on which the raid was conducted on 7th July, 2015 is 23, Raval Building, 2nd floor, J.S.S. Road, near Kennedy Bridge, Mumbai. In view of this, it is more than clear that the Petitioner has allowed the said premises to be used as brothel and therefore, the order passed by the learned Magistrate does not call for any interference.

6 By an order dated 24th April, 2015, this Court (Coram : M.L. Tahaliyani, J) had granted ad-interim relief in terms of prayer clause (b). The said interim relief has been extended from time to time.

7 However, as on today, this Court is of the opinion that no case is made out for setting aside the impugned order dated 17/4/2015 and hence, the Writ Petition deserves to be dismissed and is accordingly dismissed. The Rule is discharged. It is needless to say that the interim relief granted vide order dated 24th April, 2015 stands vacated.

8 The learned APP shall inform about this order to Dr. D.B. Marg
Police Station forthwith and the said premises be attached on or
before 14/6/2016.

9 The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)