

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3684 OF 2016

Dinesh Jivan Karki

.... Petitioner

versus

The State of Maharashtra

... Respondent

Mr.Prabhanjay R. Dave, Advocate for the Petitioner.

Mrs.Anamika Malhotra, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 15th DECEMBER, 2016.

P.C. :

Rule.

1. Heard at the stage of admission by consent.
2. This writ petition is directed against the order dated 17/04/2015 passed by the learned Special Court of PITA 54th Court, Mazgaon, Mumbai, of attaching and sealing Room No.23/25, Raval Building, 2nd Floor, Near Canedy Bridge, Opera House, Mumbai. The said room was attached and sealed as the police found prostitution in the said premises and they prosecuted two persons u/s 3 and 4 of PITA in the LAC No.8/12 of D.B. Marg Police Station. In the said case one person is shown absconding. She is the mother of the present petitioner. The petitioner was not

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accused in the said case. The trial concluded in conviction of both the accused u/s 3 and 4 of PITA by judgment and order dated 17/04/2015 passed by the learned Metropolitan Magistrate. The said judgment and order was challenged in Criminal Appeal No.440/15 and the said appeal was allowed by judgment and order dated 23/09/2016 by the learned Sessions Judge and wherein the order of conviction was quashed and set aside and against which no appeal is preferred. Hence this writ petition is filed for setting aside previous order dated 17/04/2015 of attachment of property u/s 18 (2) of PITA

3. The learned counsel for the petitioner submits that the petitioner is the son of the accused who is shown absconding. He submitted that he is residing in the same premises alongwith family since last more than 10 years. He prays that other two accused are acquitted and there is a specific finding given by the learned Sessions Judge that the said premises was not used as a brothel and the prosecution could not prove that the accused lived on the earnings of the prostitution. Hence the order of attachment and sealing of the property passed by the learned Magistrate at the time of conviction order be set aside.

4. The learned prosecutor opposed this application mainly on the ground that the present petitioner is not a lessee or tenant of the said premises. But the absconding accused i.e. the mother was the occupier and she is facing Charge of running brothel in the said premises. She submitted that the petitioner, thus, has no locus to file application. She relied on section 18(4) that as soon as the order u/s 18(2) of sealing and attaching the property is passed after the conviction by the trial Court, then lease or agreement, under which the house or the place is occupied at the time shall become void and inoperative.

5. Perused the judgment of learned Additional Sessions Judge. The learned Sessions Judge has specifically given findings that the prosecution could not prove that accused used the place as brothel and they lived on earnings and therefore offences u/s 3 and 4 of the IPC were not proved against the accused and therefore he acquitted both the accused and set aside and quashed the judgment and order of conviction given by the learned Metropolitan Magistrate. In the result the order of the learned

Metropolitan Magistrate dated 17/04/2015 was quashed and set aside as a whole including the order of attachment u/s 18(2) of PITA for a period of one year is quashed and set aside. Under such circumstances the premises cannot be kept attached and sealed by the police. In fact an issue of locus does not arise. However, as the learned counsel has raised this objection, I clarify that u/s 18 if the premises is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade, notice the owner, lessor or landlord and also tenant lessee or occupier or any other person incharge of such premises, is to be issued show cause within seven days of the receipt of the said notice why the same should not be attached for improper user thereof.

6. By the terms used in section 18 of PITA it is amply clear that if a person in the family or any other person who is the occupier of the said premises, is entitled to notice u/s 18 of PITA, when Magistrate wants to invoke powers under said section. The petitioner is a son of the absconding accused who is occupying the said premises for his residence. Moreover, the appeal against the conviction is allowed. Hence order of attachment and sealing

stands cancelled. Hence provisions u/s 18/(4) also are not applicable. In view of this I allow this writ petition in terms of prayers clause (a). Rule is made absolute.

(MRIDULA BHATKAR, J.)