

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1130 OF 2017

Lalita @ Kanchan D/o
Maharasing Dhanawat
Age : 31 Yrs., Occ. :
Labour, R/o : Bombay
Galli, Behind 'Ajanta
Talkies', Amalner,
Dist. Jalgaon.

**..... PETITIONER/
[ORI.APPLICANT]**

VERSUS

The State of Maharashtra
Through Police Inspector,
Police Station, Amalner,
Dist. Jalgaon.

..... RESPONDENT

.....

Mr. B.R.Waramaa, Advocate for Petitioner.

Mr. G.O.Wattamwar, A.P.P. for Resp. - State.

.....

CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 20/09/2017

.....

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By
consent the petition is heard finally at the stage of

admission.

2. By this Writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Order dated 25/05/2016 passed by the Judicial Magistrate First Class, Amalner, District Jalgaon, in Criminal Misc. Application No. 127/2016. The challenge raised in the petition confined to the extent of direction given by the learned Magistrate to the police officer to close the brothel and file report in compliance. It is the contention of the learned counsel for the petitioner that such direction can not be issued by the learned Judicial Magistrate and powers to close brothel lies with the District Magistrate.

3. Before advertng to appreciate the submissions advanced, it is necessary to consider few facts leading to filing of the petition. The petitioner herein along with co-accused are charge sheeted for committing the offences punishable u/ss 3,4,5,6 and 7 of the Immoral Traffic [Prevention] Act, 1956 [for short, 'Immoral Traffic Act'] read with section 370 of the Indian penal Code in a case registered against them vide Crime No. 3013/2016 with police station Amalner, District Jalgaon. Pursuant to the

order dated 23/03/2016 passed u/s 437 of Code of Criminal Procedure, learned Magistrate pleased to enlarge the petitioner on bail on certain terms and conditions. Accordingly, the petitioner furnished bail. Subsequent thereto, the petitioner moved application seeking relaxation of condition to attend the police station on every Monday which was imposed vide order dated 28/03/2016. By the impugned order dated 25/05/2016, learned Magistrate rejected the application and passed the following order.

"ORDER

- 1. The application is rejected.*
- 2. Accused is directed to furnish solvent surety as ordered below bail application within 8 days. Accused is further directed to furnish additional in person surety in Rs. 15,000/- within 8 days.*
- 3. Failure of accused to furnish surety as above shall amount to cancellation of bail.*
- 4. I.O. is directed to submit report regarding the status of victims, whether they are again involved or forced into*

prostitution ? Whether their parents are keeping them safe and away from brothel ?

5. I.O. to see whether brothel of accused is totally closed ? If it is not closed, I.O. shall seal the brothel and conduct panchanama and furnish report.

6. I.O./P.I. of Amalner police station is directed to maintain strict and constant vigilance over the activities of accused. The police officers shall ensure that brothel in this case is totally closed and submit the report of closure of brothel, positively.

7. I.O. shall submit document/register regarding past attendance of accused in the police station. If accused failed to attend police station in the past, her bail shall stand cancelled.

8. I.O. is further directed to submit attendance register on every Tuesday to show that accused is remaining present at police station and she is not leaving the jurisdiction of Court.

9. I.O. shall submit his report till

30/05/2016.

10. Copy of this order and all relevant papers shall be kept in the crime papers. These shall be treated as additional conditions within the purport of section 437 (3) (c) proviso.

11. Issue letter to I.O. accordingly.

12. Probation Officer shall furnish report about victim impact statement and social impact assessment regarding released victims, their activities, their restoration and rehabilitation with parents, their health and care, positively on or before 06/06/2016. Issue letter to Probation Officer accordingly. "

4. Mr. Waramaa, learned counsel for the petitioner assailed the order with contention that the order impugned is not sustainable in law. Although the order is challenged on various grounds, however learned counsel restrict the challenge raised in the petition to correctness and legality of condition Nos. 5 and 6. In short, it is the contention of the petitioner that issuance of such direction falls beyond the competence and jurisdiction of the learned judicial Magistrate. By referring section 18 of the

Immoral Traffic [prevention] Act, learned counsel submits that authority to close brothel vests with the District Magistrate. Learned judicial Magistrate holds no authority to pass such order. It is pointed out that as provided u/s 2-C of the said Act, the word 'Magistrate' as referred in section 18 is to be interpreted as 'District Magistrate'.

5. Learned A.P.P. conceded with the legal submissions advanced and submits that the direction given by the learned Judicial Magistrate to close down brothel falls beyond the ambit and exercise of powers by judicial Magistrate. However, learned A.P.P. submits that the liberty be given to take appropriate action by competent authority.

6. On perusal of the application moved by the petitioner and the order passed, I am constrained to observe that the learned Magistrate has exceeded its jurisdiction in passing the impugned order. It transpires from the order passed that the petitioner was released on bail vide order dated 23/03/2016 by imposing certain conditions which includes condition No. 3-C to attend police station on every Monday till filing of charge sheet. The application moved by the petitioner was confined to

relaxation of condition No. 3 (C) of order dated 23/03/2016. While dealing with the application, learned Magistrate has rejected the application and passed order as quoted above giving various directions in the matter, which is nothing but an imposition of additional conditions in addition to condition imposed vide order dated 23/03/2016. Learned Judicial Magistrate even exceeded his powers in issuing such direction which do not falls within the ambit and powers of the learned Magistrate. In this context, learned counsel has rightly invited attention to section 18 of the Immoral Traffic Act, which reads as under :

“ 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 meters] 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 in charge 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.

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.

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

(3) Orders passed by the Magistrate or Court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any Court, civil or criminal and the said orders shall cease to have validity after the [expiry of one year or three years, as the case may be].

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial Court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a Magistrate passes an order under sub-section (1), or a Court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under

clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be and punished accordingly. "

7. The word used as 'Magistrate' in section 18 (1) is to be read in context with the definition of the word 'Magistrate' provided u/s 2-c of said Act, which reads as under :

" 2. Definitions -----

(a) -----

(b) -----

(c) "Magistrate" means a Magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule. "

8. Schedule I as referred in section 2-c of said Act reads as under :

" THE SCHEDULE

[see section 2 (c)]

<i>Section</i>	<i>Magistrate competent to exercise the powers</i>
----------------	--

<i>7 (1)</i>	<i>-----</i>
--------------	--------------

<i>11 (4)</i>	<i>-----</i>
---------------	--------------

15 (5) -----
 16 -----
 18 *District Magistrate or Sub-Divisional Magistrate*
 19 -----
 20 -----
 22-B -----"

9. If we consider section 18, then same is to be read in two parts. So far as sub section (1) of section 18 of said Act is concerned, the powers to take action which include to close down the brothel, lies with the District Magistrate or Sub Divisional Magistrate. So far as powers to be exercised as contemplated in sub section (2) of section 18 is concerned, the powers are vested with the Court concerned, which found a person guilty of the offence punishable u/s 3 or 7 of the Immoral Traffic Act. Thus, on conviction, after giving show cause notice to the person convicted, the Court can issue direction in the nature as provided under sub section (1) of section 18 of the said Act. The powers to be exercised under sub section (1) of section 18 of the said Act by the District Magistrate or Sub Divisional Magistrate, are necessarily exercise of powers to prevent the commission of such act.

10. Since the petitioner is facing trial and the stage to exercise powers under sub section (2) of section 18 of the said Act, has not reached, to have passed such order by learned Magistrate the impugned order is not sustainable in law. In this view, I am inclined to allow the petition in terms of prayer clause 'A'. However, it is clarified that allowing the petition and setting aside the impugned order will not come in the way of District Magistrate or the Sub Divisional Magistrate vested with the powers under sub section (1) of section 18 of the said Act to exercise such powers and take appropriate action as deem fit and proper.

11. Rule made absolute in above terms with no order as to costs.

[V.L.ACHLIYA, J.]