

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3076 OF 2016**

Ms. Richa Agarwal Petitioner

Vs.

The State of Maharashtra Respondent

Mr. Ajay Basutkar, Advocate for Petitioner.

Ms. Anamika Malhotra, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 23rd January, 2017

P.C.

1 The petitioner is the owner of Cleopatra Day Spa, situate at SVP Nagar, MHADA Four Bungalow, Andheri (West), Mumbai. She alongwith three others is an accused in CR No. 50 of 2011 of Varsova Police Station filed for the offences punishable under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956. By the present petition, she challenges the orders of the trial court and the revisional court refusing to discharge her from the proceedings.

2 It is the prosecution case that on receiving information that the petitioner is running a brothel house under

guise of a massage centre, the police from Varsova Police Station arranged a raid by sending a bogus customer to Cleopatra Day Spa alongwith panch witness. The bogus customer was shown a menu card and asked to choose a girl for body massage. For the full body massage, an additional amount of Rs.10,000/- was demanded. Accordingly the bogus customer selected a girl and paid the amount to the woman sitting at the reception. Thereafter as per instructions of the lady at the reception, the bogus customer alongwith girl went to a jacuzi room where the girl asked the bogus customer to undress completely. She also removed all her clothes. The bogus customer then engaged the girl in conversation and sent a message to the investigation team, after which, raid was conducted. Later FIR No. 50 of 2011 came to be filed on 10th December, 2011.

3 Mr. Basutkar, the learned advocate for the petitioner submits that the petitioner cannot be said to be connected to the prostitution activities found by the police in Cleopatra Day Spa, though she is the owner thereof. According to him at the relevant time, the petitioner was not even in Mumbai. She was at Haryana and she was not aware of the activities going on in the Cleopatra Day Spa.

4 The petitioner had filed application dtd. 1st August, 2012 for discharge before the trial court. By the order dtd. 22nd

April, 2013, the trial court dismissed the application with observations that the investigation reveals that the petitioner is a partner of the establishment. The license of the establishment is in her name and therefore she cannot be said to be unconnected to the activities going on therein. As regards the argument of knowledge of the petitioner of the activities in her establishment, the trial court observed that the same can be established only by the evidence at trial and not before that. The Sessions Court also went through the investigation case papers to confirm the observations of the trial court. It noted that the investigating officer on 9th December, 2011 conducted the raid on the information received. The information was that under the guise of massage centre, brothel house was being run at the Spa. The investigating officer recorded the statements of various witnesses as also the staff members. On perusal of the statements of the witnesses, the Sessions Court is satisfied that there is no error in the order of the trial court.

5 The view taken by the courts below that the knowledge of the activities can be established only by way of evidence at the time of trial cannot be faulted with. Considering the fact and circumstances of the case, this is not the case for discharge of the petitioner, who would be the main accused in the matter. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)