

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

**CRIMINAL APPLICATION NO.344 OF 2017
IN
CRI. REVISION APPLICATION NO.610 OF 2015**

Lalji Prasad Somagu Shastri	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr.Prabhanjan R. Dave, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 23, 2018.

P.C. :

The applicant was prosecuted for the offence registered under L.A.C. No.29 of 2010 under Section 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act (for short “ITP Act”). On completing investigation, charge - sheet was filed vide C.C. No.737/PW/2010. Applicant was tried before the Special ITPA Court at Mazgaon, Mumbai. The applicant was convicted under Sections 3 and 7 of the ITP Act vide judgment and order dated 23rd May, 2013. The applicant was acquitted for the offences punishable under Sections 4, 5 and 6 of the ITP Act. Learned Magistrate also directed that brothel at Room No.8, Dayanand Building, First Floor, Pavwala street, Mumbai, be

attached under Section 18(2) of the Immoral Traffic (Prevention) Act, 1956, for a period of one year from the date of its actual attachment and closure of the brothel for its improper use and the convicts, any other occupier or any other person incharge of the rooms stand evicted from the aforesaid room. Special police officer under the ITP Act of D.B. Marg police station to comply the order of closure, attachment, eviction within seven days from date of order and submit compliance report with proof.

2 The judgment and order dated 23rd May, 2013, convicting the applicant was challenged before the Court of Sessions by preferring an Appeal which was dismissed by the Sessions Court vide judgment and order dated 16th December, 2015 in Appeal No.91 of 2013. The applicant has thereafter preferred Criminal Revision Application No.610 of 2015, in this Court which has been admitted and the sentence of imprisonment has been suspended by this Court, by order dated 23rd December, 2015. On 9th June, 2016, the applicant preferred an application before learned Magistrate for de-sealing the said room premises and handing over possession of the room premises. The police filed say dated 20th July, 2016. The police opposed the grant of relief but did not point out whether the property was attached and if so, when it has been attached. The learned Magistrate by

order dated 15th March, 2017 rejected the application on the ground that the judgment of conviction is under challenge before High Court and the trial Court had no reason to interfere in the said order.

3 This application has been preferred for removal of attachment and handing over vacant and peaceful possession of the premises to the applicant. Learned advocate appearing for the applicant submitted that the trial Court had directed the attachment of the said property for a period of one year. The property was thereafter attached and although the period of one year as directed by the trial Court had lapsed, the property was not released. It is submitted that the copy of the panchanama after attachment of the said property was not furnished to the applicant and hence, the applicant was not aware as to when the property was attached. It is submitted that in view of the judgment and order dated 23rd May, 2013, it was the duty of the police authorities to release the property on expiry of period stipulated in the said order. It is further submitted that the alleged raid was conducted on 28th May, 2010 and the trial Court had passed the judgment and order on 23rd May, 2013. As per Sub clause (3) of Clause 18 of ITP Act, the attachment order can be for a period of one year or three years, as the case may be. It is

submitted that the period, as stipulated in the order is over and, therefore, the property has to be released. The applicant is entitled for possession. He has annexed the documents showing his right over the premises. It is submitted that the applicant is legal tenant in respect to the premises. He is in need of the same for residential purpose. The room is no more required to be attached or the period of attachment is over. According to the prosecution the applicant let out premises to the co-accused which was allegedly being used by the said co-accused for conducting the brothel.

4 It is submitted by the advocate that there are several properties under attachment in Mumbai and although the period as stipulated under Section 18(3) is over, the properties are not released. It is submitted that several such properties are under attachment in Mumbai, inspite of lapse of period of attachment, the concerned persons are not even aware about the fact that properties cannot be under attachment beyond the requisite period and it would be in the interest of justice to issue certain directions to the police authorities to release the properties after lapse of time stipulated under Section 18(3) of the ITP Act.

5 Learned APP submitted that the applicant has been

convicted for the offence punishable under the ITP Act. The conviction has been confirmed by both the Courts. Revision against conviction is pending before this Court. The panchanama indicate that the same was signed by person who was present at premises on the date of attachment. There is no provision in law which requires that police shall desal property on their own after the period is over. This Court vide order dated 6th October, 2017, had directed the prosecution to file an affidavit stating the date when the subject premises came to be attached and whether period of one year from the date of such attachment is over or not. In pursuant to the said directions, the Inspector of Police, D.B. Marg Police Station, Mumbai, has filed an affidavit dated 16th February, 2018. Alongwith affidavit, he has annexed the panchanama of attachment of the said property dated 29th May, 2013. In the affidavit, it is stated that the premises was attached and sealed by making panchanama on 29th May, 2013. It is also stated that while convicting the applicant, the trial Court was pleased to record the finding that the applicant could not lead any evidence to rebut the presumption under Section 3(2)(a) of the ITP Act that he was having knowledge that the premises let out by him was used as a brothel. It is further mentioned that the trial Court has recorded a finding after filing of case, the

applicant did not object accused no.1 for using the premises as a brothel. It is, further stated that the application may be dismissed. The claim of the applicant over the said property was, however, not disputed.

6 In accordance with order dated 23rd May, 2013, the subject property was attached under Section 18(2) of the ITP Act for a period of one year from the date of its actual attachment and closure of brothel for its improper use. On perusing the affidavit dated 16th February, 2018, filed by the Inspector of Police and panchanama annexed to the said affidavit, it is apparent that the property was attached on 29th May, 2013, and, thereby, the period as stipulated in the judgment and order dated 23rd May, 2013, has come to an end. The trial Court in the judgment dated 23rd May, 2013 has observed that from electricity bill Exhibit - 8, the applicant appears to be owner of the room where raid was effected. The applicant was prosecuted for allowing premises to be used as a brothel and convicted for the said offences as well as for offence under Section 7 of the said Act. Thus, apparently, there is no dispute that premises belong to the applicant. In accordance with Section 18(3) shall cease to have validity after the expiry of one year or three years as the case may be. Irrespective of conviction the order has come to an end and,

therefore, this property is required to be released. It is pertinent to note that even in accordance with the provisions under Section 18(3) of the ITP Act, the property cannot be attached for a period beyond the time period prescribed under the said order. It is clear that as stipulated in order dated 23rd May, 2013, and inspite of that the property continued under the order of attachment. In these circumstances, the property which is the subject matter of this proceedings and which was being attached is required to be released and has to be handed over to the applicant.

7 It is noted that the panchanama of attachment of the property was recorded on 29th May, 2013. On perusal of the affidavit in reply filed by police, it appears that the police machinery is under belief that the property would continue to be under attachment, on account of judgment of conviction. Reading the proviso to Section 18(3), it is crystal clear, that the order passed by trial Court under Sub-section (1) shall stand set aside in case the conviction under Sections 3 and 7 of the said Act is set aside. In the present case the period of attachment as directed was already over. During the operation of order of attachment the occupier stands evicted. The eviction cannot continue without due process of law. It is expected from the investigating authorities that in pursuant to the said attachment in compliance

with the orders of the Court, copy of the panchanama be furnished to the concerned person who is occupying the premises or who is entitled for the possession of the said property and it is also expected that the police machinery shall release the property as soon as the period of attachment is over, unless there is embargo of any legal provisions or any order passed by the Court in releasing such property. While attaching the property, the police shall put up a notice that this property is under attachment for a period stipulated in the order passed by the Court.

8 In the circumstances, I pass the following order:

:: ORDER ::

- (i) Criminal Application No.344 of 2017 is allowed in terms of prayer Clause (a);
- (ii) Criminal Application No.344 of 2017, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)