

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl. R.C.No.1591 of 2017

G.Suseela

... Petitioner

Vs

The State,
Rep. by the Inspector of Police,
All Women Police Station,
Vellore, Vellore District.

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 13.03.2017 passed by the learned Judicial Magistrate No.I, Vellore, Vellore District in Crl.M.P.No.272 of 2017.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.B.Arul Mozhimaran
Government Advocate
(Criminal Side)

ORDER

This criminal revision case is filed against the order dated 13.03.2017 passed by the learned Judicial Magistrate No.I, Vellore, Vellore District in Crl.M.P.No.272 of 2017.

2. The facts in a nutshell are as under: According to the petitioner, she is the owner of A.M.P. Lodge situated at Arani Road, Bagayam, Vellore and as she was unable to attend to the day to day affairs of the lodge, she had leased out her lodge to one Thirunavukkarasu, who is elder brother-in-law of the petitioner on condition that he pays a sum of Rs.1 lakh per year to the petitioner. The said Thirunavukkarasu was instructed to use the lodge for lawful purpose only. On such understanding,

the petitioner handed over the possession on 15.01.2012 and the said Thirunavukkarasu paid an advance amount of Rs.1 lakh.

3. It is stated that all of a sudden on 04.08.2013, the respondent police conducted raid in the lodge and arrested two girls and recorded their statements and on the basis of the said statements, the respondent police registered a case against 8 persons, including the petitioner's brother-in-law in Crime No.29 of 2013 for the offence under Sections 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956. It is further stated that after securing the two girls from the lodge, the respondent police closed and sealed the lodge and key was produced before the learned Judicial Magistrate I, Vellore, as case property in C.P.No.298 of 2013.

4. It is the case of the petitioner that more than three years have lapsed so far and the respondent police neither conducted enquiry with the petitioner or other witnesses and she is being made to run from pillar to post. It is the grievance of the petitioner that due to sealing of the lodge for past four years without maintenance, the building is in a worst condition.

5. In such premise, the petitioner filed Crl.O.P.No.26119 of 2016 before this Court seeking a direction to the respondent police to hand over the key. This Court, by order dated 05.12.2016, permitted the petitioner to approach the learned Judicial Magistrate I, Vellore for return of the key with necessary documents and directed the learned Judicial Magistrate I, Vellore to verify the documents and pass appropriate orders, on merits, with regard to return of key of the lodge to the petitioner.

6. Thereafter, it is stated that the petitioner filed a petition under Section 451 of the Criminal Procedure Code, being Crl.M.P.No.272 of 2017, seeking return of key of the lodge and the same was dismissed by order dated 13.03.2017.

7. Assailing the said order, the present criminal revision case is filed.

8. It is the contention of the learned counsel appearing on behalf of the petitioner that the receipts of water and sewerage board issued by the Corporation for the period between 2013 and 2017 stand in the name of the petitioner, but the trial Court failed to give due credence to the same.

9. It is further contended that the trial Court erred in dismissing the petition filed by the petitioner on the ground that the certificate of registration has not been renewed after 31.3.2007 and license has also not been renewed and the petitioner had not produced the title deeds in respect of the

lodge to establish her ownership.

10. Per contra, the learned Government Advocate (Criminal Side) refuted the arguments advanced by the learned counsel for the petitioner and reiterated the reasons that weighed with the Court below in passing the impugned order and submitted that if the key of the said lodge is handed over to the petitioner, similar offences will be continued.

11. I heard Mr.E.Kannadasan, learned counsel for the petitioner and Mr.B.Arul Mozhimaran, learned Government Advocate (Criminal Side) for the respondent and perused the documents available on record.

12. Admittedly, the petitioner is not arrayed as a party to the criminal proceedings initiated by the respondent police. The fact that petitioner is mother of minor G.Rajeshkumar, who is alleged to be the owner of AMP Lodge, is not disputed. It is the specific case of the petitioner that except Room No.104 of AMP Lodge, Bagayam, all other rooms have been leased to CMC, Vellore.

13. The petitioner has filed a sale agreement dated 22.02.2010 and also an affidavit stating that the property is in the name of the minor son, G.Rajeshkumar and she is the guardian of the said minor, appointed under the sale deed. That apart, the petitioner had also produced copies of Water and Sewerage Board receipts pertaining to the period 2013 to 2017 issued by the Corporation in the name of Rajeshkumar, reflecting the name of the petitioner.

14. It is also not in dispute that the petitioner produced a certificate of registration issued by the Commercial Tax Officer and lease agreement in respect of AMP Lodge. Even though the certificate of registration produced is of the year 2006 and is valid till 31.03.2007, renewable year after year, the Court below held that the certificate of registration has not been renewed after 31.03.2007 and license has also not been renewed. If the petitioner intends to run the lodging business or use it for any commercial purpose, it is for the petitioner to renew the license and certificate of registration and non renewal of the certificate of registration cannot be put against the petitioner.

15. One more aspect which needs mention is recorded in paragraph (5) of the order under challenge as follows: "Though it was argued that the property is leased out to CMC Hospital, the copy of the lease agreement produced for my perusal is in favour of one Thirunavukkarasu in respect of plot number 17 and does not pertain to AMP lodge. It is not clear as to the relevance of the lease agreement dated 15.12.2012 with that of

the premises namely AMP Lodge. The Central Board Sales Tax receipt produced for my perusal dated 30.05.2013 in respect of AMP Lodge stands in the name of one Thirunavukkarasu".

16. From a bare perusal of the above said finding, it can be deduced that there was a lease agreement as claimed by the petitioner in favour of one Thirunavukkarasu. It is not the case of the respondent police that the said Thirunavukkarasu is the owner of AMP Lodge. The Central Board Sale Tax receipt in the name of Thirunavukkarasu could have been obtained in his capacity as lessee. In case the petitioner intends to run the business in AMP Lodge, she can very well renew the license and registration. If the petitioner runs the said lodge without proper sanction under law, it is always open to the statutory authorities to proceed against the petitioner in accordance with law. There is no provision empowering indefinite sealing of the premises used for offences punishable under the Immoral Traffic (Prevention) Act, when the owner is innocent. On these grounds, the plea of the petitioner for return of key ought not to have been rejected.

17. At this juncture, it is apposite to refer to Section 18 of the Immoral Traffic (Prevention) Act, 1956 reads as follows:

"18. 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 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 use 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 use therein."

(emphasis supplied)

18. A perusal of the above section clearly shows that the Magistrate on receipt of information from the police or otherwise that a house is being run as a brothel, after issuance of notice to the owner or lessor, may pass orders directing eviction of the occupier of house and directing before letting it out during the period of one year immediately after the passing of the order, the lessor or the landlord should obtain the previous approval of the Magistrate. Nothing has been placed on record on the side of the respondent police or discussed in the order under challenge as to whether the Magistrate had issued notice to the petitioner before attachment of the premises or directly attached the premises. That apart, the petitioner is nowhere connected with the alleged offence and therefore, the proviso to Section 18(1) of the the said Act definitely comes in aid of the petitioner. The period for retaining the premises stipulated in the said section had also elapsed and the same was not strictly adhered to by the learned Magistrate.

19. For the foregoing reasons, the order passed by the learned Judicial Magistrate No.I, Vellore, cannot be sustained and the same is accordingly set aside. However, this order will have no bearing on the pending proceedings in Crime No.29 of 2013 for the offence under Sections 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956, which are independent proceedings.

20.In the result:

(a) this criminal revision is allowed and the order passed in Crl.M.P.No.272 of 2017 dated 13.03.2017 on the file of the learned Judicial Magistrate No.I, Vellore, Vellore District is set aside;

(b) the key pertaining to the sealed room may be forthwith handed over to the petitioner. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Vellore, Vellore District.
2. The Inspector of Police,
All Women Police Station,
Vellore, Vellore District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate sr.no.22478

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jp(co)
nr 26/10/2018

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