

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

CRIMINAL WRIT PETITION NO.389 OF 2019

Aashabai d/o. Santram Deshmane,
@ Aashabai w/o. Rambhau Pandit
Age : 50 years, Occu : Household,
R/o. Manavat, Tq. Manvat,
Dist-Parbhani. **.. PETITIONER**

VERSUS

1. The Collector,
Parbhani.
2. The Sub-Divisional Officer,
Pathari, Tq.Pathari, Dist.Parbhani.
3. The Police Inspector,
Police Station, Manvat,
Tq. Manvat, Dist. Parbhani.

.. RESPONDENTS

...
Mr.Mahesh S.Bhosale, Advocate for the
petitioner.
Mr.K.D.Mundhe, APP for the respondent-State.

...

**CORAM : V.L.ACHLIYA,J.
DATE : 29.07.2019**

ORAL JUDGMENT :

1] Rule. Rule made returnable
forthwith. With the consent of the learned
Advocates, the Petition is heard finally.

2] Heard learned counsel for the petitioner and learned APP. Perused the impugned order.

3] In brief, it is the contention of the learned counsel for the petitioner that the order impugned passed by the Sub Divisional Officer i.e. respondent no.2 is without application of mind. It is pointed out that by virtue of sub-section (3) of Section 18 of the Immoral Traffic [Prevention] Act, 1956 [for short 'the said Act'], it has been clearly provided that the order passed in exercise of the powers conferred under sub-section (3) of Section 18 of the said Act ceased to have validity after the expiry of one year or three years, as the case may be. It is submitted that in the present case the premises are lying under seal for the period more than 3 years. While deciding the representation made by the

petitioner to de-seal the premises, though the Magistrate has recorded in the order the contention raised by the petitioner, the same has not been dealt with while passing the impugned order.

4] Learned APP supported the order passed by the Sub-Divisional Magistrate. It is contended that looking to apprehension expressed by officials from concern Police Station that the premises may be again misused for conducting activities prohibited under the provisions of the Immoral Traffic [Prevention] Act, 1956, the impugned order has been passed.

5] On due consideration of the submissions advanced, I am of the view that the order passed by the learned Magistrate is without proper application of mind. It has been passed in complete ignorance of the provisions contained in sub-section (3) of

Section 18 of the Immoral Traffic
[Prevention] Act, 1956, which reads as under:

***18. Closure of brothel and eviction
of offenders from the premises. -***

(1)

(2)

(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.

6] Plain reading of sub-section (3) of Section 18 of the said Act spell out that the orders passed under sub-section (1) or (2) of Section 18 of the said Act cease to operate

after expiry of one year or three years, as the case may be. According to the case of the petitioner, the premises in question was sealed on 14th May, 2015, as per order passed by the respondent no.2 in exercise of the powers under sub-section (1) of Section 18 of the said Act. Thus, the period of more than three years has been lapsed from the date of sealing / closure of premises.

7] Perusal of the impugned order dated 31.12.2018 reveals that the petitioner has specifically raised contention that the order passed sealing the premises ceased to operate on expiry of period of three years as provided under Section 18 (3) of the said Act. Although the learned Magistrate has noted the contention raised in the representation, however, rejected the same without recording any reason to reject the contention of the petitioner. So also though no appeal is provided under the said Act, the

representation made by the petitioner has been treated as appeal.

8] It appears that the order has been passed without looking to the provision contained in sub-section (3) of Section 18 of the said Act. It was expected on the part of the learned Sub-Divisional Officer to have dealt with the contention raised by the petitioner while passing the order. Report of the police that de-sealing of premises would leads to re-use of premises for carrying prostitution, cannot be a ground to overlook the statutory provision under law. In the event the premises found to be again used for prostitution, the authority can again use the powers under Section 18 of the said Act. Only on the basis of apprehension expressed by police, the Sub-Divisional Officer can not overlook the mandate of law as contained in sub-section (3) of Section 18 of the said Act. In that view, the impugned order

deserves to be set aside and the case needs to be remanded back for deciding of same afresh by the Sub-Divisional Officer i.e. respondent no.2. Accordingly, the impugned order is set aside. The petitioner is directed to appear before the Sub-Divisional Officer, Pathri on 21st August, 2019. On appearance of the petitioner, the Sub-Divisional Officer i.e. respondent no.2 is directed to hear and decide the representation made by petitioner afresh, by passing the reasoned order within six months.

9] Needless to observe that the Sub-Divisional Officer must deal with the contention raised by the petitioner that the order of sealing of the premises ceased to operate on expiry of three years from the date of passing of order of sealing of the premises.

10] Rule made absolute in above terms.

11] Petition is disposed of accordingly.

[V . L . ACHLIYA]
JUDGE

DDC