

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 578 OF 2019**

1. Ketan Ramanlal Doshi
Age: 55 years, Residing at 503,
Mayur Tower, Eksar Road,
Borivali (West), Mumbai 400 092

2. Nilesh Ramanlal Doshi
Age: 53 years, Residing at Flat No. 502,
503, Mayur Tower, Eksar Road,
Borivali (West), Mumbai 400 092

...Petitioners

Versus

1. The State of Maharashtra
(at the instance of
Borivali Police Station)

2. Investigation Officer
In C.R. No. 176/2018
Registered with Borivali Police Station,
S. V. Road, Borivali (W),
Mumbai – 400 091.

3. Kunal Subhash Verma
Age: 32 years, R/o. 33, Nirmala Colony,
Mount Mary Church,
Bandra (W), Mumbai
Also at :
Flat No. 802, Lobo Apartment,
Holi Cross Road, IC Colony,
Borivali (West), Mumbai 400 103

4. Babita Sanjay Narang
Age: 47 years, R/o. B-03,
Sai Tower, in front of
Royal Shopping Center,
Basin Road, Vasai (W),
Thane – 401 202

...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 693 OF 2019**

1. Kunal Subhash Varma
Flat No. 802, Lobo Apartment,
Holi Cross Road, IC Colony,
Borivali -West, Mumbai 400 103 ...Petitioner

Versus

1. The State of Maharashtra,
through Public Prosecutor,
representing Borivali Police Station

2. Vijayendra Pratap Ambawade,
Flat No. 50, Vinay Classic Building,
Poonam Garden, Mira Road,
Thane, Maharashtra ...Respondents

Mr. Aabad H. Ponda a/w Mr. Karma Vivan for the Petitioners in
WP/578/2019

Mr. Vinod D. Gangwal i/b Ms. Himalee Divekar for the Petitioner in
WP/693/2019 and for the Respondent No. 3 in WP/578/2019

Ms. P. P. Shinde, A.P.P for the Respondent Nos. 1 & 2-State in
WP/578/2019 and for the Respondent No.1-State in WP/693/2019

None for the Respondent No. 4 in WP/578/2019

None for the Respondent No. 2 in WP/693/2019

CORAM : REVATI MOHITE DERE, J.
MONDAY, 11th NOVEMBER 2019

ORAL JUDGMENT :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith, with the consent of
the parties and is taken up for final disposal. Respondents waive service
through their respective counsel.

3 Since the order impugned dated 11th September 2018 is the
same in both the aforesaid petitions, the aforesaid petitions are being
disposed of by a common order.

4 The petitioners in Criminal Writ Petition No. 578/2019 are the
original owners of a premises i.e. shop No. 6, Plot No. 179, Satra Park, TPS
III, Kastur Park, Opp. Veg Treat One Hotel, Shimpoli, Borivali (West),
Mumbai-400 092, (hereinafter referred to as `the said premises'). The said
premises is the subject matter of both the aforesaid petitions. The petitioner
in Criminal Writ Petition No.578/2019 had given the said premises on leave
and license basis to a firm i.e. M/s. ACE Hair and Skin Lounge, of which,
Kunal Varma (petitioner in Writ Petition No. 693/2019 and Respondent
No.3 in WP/578/2019) was one of the partner and as such, was a licensee in
the said premises, at the relevant time.

5 A few facts as are necessary to decide the aforesaid petitions are as under :

Admittedly, the petitioners in Writ Petition No. 578/2019 are the owners of the shop premises mentioned hereinabove. Admittedly, the petitioners had given the said premises on leave and license basis to a firm i.e. M/s. ACE Hair and Skin Lounge vide Leave and License Agreement dated 6th February 2017 i.e. from 1st March 2016 to 28th February 2019. On 31st March 2018, a raid was conducted on the said premises, as according to the prosecution, prostitution activities were allegedly being carried out under the guise of Thai Spa in the said premises. Three ladies were found indulging in prostitution activities in the said raid. Accordingly, accused Komal (Manager) and one Vijay were apprehended on the spot. Pursuant thereto, C.R. No. 176/2018 was registered with the Borivali Police Station, Mumbai, as against the accused, including the petitioner-Kunal Varma (in Writ Petition No. 693/2019) alleging offences punishable under Sections 370(1), 114 and 34 of the Indian Penal Code ('IPC') and under Sections 3, 4, 5, 7(1)(b) of the Immoral Traffic (Prevention) Act ('PITA').

Admittedly, the petitioners in Writ Petition No. 578/2019 were not arrayed as accused in the said C.R. and as such they were not charge-sheeted. Pursuant to the registration of the FIR, the petitioners terminated

the Leave and License Agreement entered into with the firm- M/s. ACE Hair and Skin Lounge vide letter dated 4th April 2019. After the case was committed to the Court of Sessions, the respondent No. 1-State filed an application being Misc. Application No. 61/2018, for sealing the premises under Section 105E of the Criminal Procedure Code ('Cr.P.C'). The petitioners in Writ Petition No. 578/2019 intervened in the said application. It appears that the petitioner-Kunal Varma also filed an application being Misc. Application No. 114/2018 for return of the premises in their favour, as the petitioner's firm was the licensee in the said premises. The learned Sessions Judge vide order dated 11th September 2018 allowed the application of the State for sealing the said premises under Section 105D of the Cr.P.C. Pursuant thereto, the shop premises was sealed by the respondent No.1-State.

After the premises were sealed, the petitioners in Writ Petition No. 578/2019 preferred another application being Misc. Application No. 194/2018, praying *inter alia* therein that they were the owners of the shop premises and that the said premises be returned to them. The said application was resisted and opposed by the petitioner-Kunal Varma in Writ Petition No. 693/2019. However, the respondent No. 1 i.e. the prosecuting agency gave their no objection for returning the said premises to the

petitioners in Writ Petition No. 578/2019. The learned Sessions Judge, vide order dated 9th January 2019, rejected the said application preferred by the petitioners in Writ Petition No. 578/2019 on the premise that the earlier application was rejected. Hence, being aggrieved by both the orders i.e. orders dated 11th September 2018 as well as the order dated 9th January 2019, the petitioners have filed the aforesaid Criminal Writ Petition No. 578/2019.

As far as Kunal Varma is concerned, being aggrieved by the order dated 11th September 2018, the said petitioner has filed Writ Petition No. 693/2019.

6 Mr. Ponda, learned counsel for the petitioners in Writ Petition No. 578/2019 submitted that the impugned orders dated 11th September 2018 as well as 9th January 2019 passed by the learned Sessions Judge, Mumbai, are perverse and untenable in law. He submitted that the application filed by the respondent No. 1 i.e. Misc. Application No. 61/2018 for sealing the premises under Section 105E Cr.P.C was clearly not maintainable and as such, the learned Judge ought not to have entertained the said application and passed the impugned order dated 11th September 2018. He further submitted that the order dated 9th January 2019 is also

unsustainable, having regard to the fact that the premises could not have been sealed by the police either under Section 105E Cr.P.C or Section 18(1) of the PITA. He further submitted that under Section 457 Cr.P.C, the petitioners were entitled to the possession of the said premises, being the owners of the said premises. He further submitted that the respondent Nos. 3 and 4 were only the licensees in the said premises, under a Leave and License Agreement. He further submitted that the respondent Nos. 3 and 4 had clearly breached clause (17) of the Leave and License Agreement and as such, the Leave and License Agreement was terminated by the petitioners vide letter dated 4th April 2018. He further submitted that the respondent Nos. 3 and 4 have also failed to pay the license fee for about two years. He submitted that in any case, the Leave and License Agreement has expired on 20th February 2019 and as such, the respondent Nos. 3 and 4 have no right over the said premises and as such the premises be handed over to the petitioners, who are the rightful owners of the said premises. Learned counsel relied on the judgment of the Apex Court in the case of ***Bharat Sanchar Nigam Ltd. vs. Suryanarayanan & Anr.***¹.

7 Mr. Vinod Gangwal, learned counsel appearing for the respondent Nos. 3 and 4 in Criminal Writ Petition No. 578/2019 opposed

1 2019 All MR (Cri.) 1256 (.S.C)

the petition. He submitted that the dispute is between the petitioners and the respondent Nos. 3 and 4 and as such, the issue of possession is required to be decided by the Competent Court/Authority.

8 As noted above, the petitioner-Kunal Varma has also filed Criminal Writ Petition No. 693/2019, impugning the order dated 11th September 2018, by which the learned Sessions Judge had sealed the premises on an application filed by the respondent-State. According to the learned counsel for the petitioner-Kunal Varma, who is also a respondent in Criminal Writ Petition No. 578/2019, the issue of possession is required to be decided by the Competent Authority/Court. He submitted that the allegations as against the respondent Nos. 3 and 4 in Writ Petition No. 578/2019 are false and baseless and that no such activity of prostitution as alleged was going on in the said premises. He submits that the learned Sessions Judge ought to have allowed the application of the petitioner-Kunal Varma and the premises ought to have been handed over to the petitioner-Kunal Varma under Section 457 Cr.P.C.

9 Perused the papers. As noted above, admittedly, the petitioners in Criminal Writ Petition No. 578/2019 are the owners of the shop premises, who had let out the said premises on leave and license basis to

M/s. ACE Hair and Skin Lounge vide Leave and License Agreement dated 6th February 2017 from 1st March 2016 to 28th February 2019. Admittedly, on 31st March 2018, the said premises was raided, as allegedly, prostitution activities were going on in the said premises. Pursuant to the raid, an FIR was registered with the Borivali Police Station, alleging offences under the IPC and PITA. The respondent Nos. 3 and 4 in Writ Petition No. 578/2019 were accused in the said case and after the investigation, were charge-sheeted. Admittedly, the petitioners in Criminal Writ Petition No. 578/2019 were not arrayed as accused in the said C.R. and as such there was no question of filing a charge-sheet against them. Infact, the said petitioners are witnesses in the said case. Admittedly, the respondent-State filed an application before the learned Sessions Judge under Section 105E Cr.P.C for sealing the said premises. As noted above, the petitioners/owners of the said premises intervened in the said application, as they were not a party in the said application preferred by the Respondent-State. It is not in dispute that Kunal Varma (petitioner in Writ Petition No. 698/2019) also filed an application and sought possession of the said property under Section 457 of Cr.P.C. The learned Sessions Judge vide order dated 11th September 2018 allowed the application (Exhibit 61) filed by the respondent-State, whereas, rejected the applications filed by the petitioners in both the aforesaid petitions. The subsequent application preferred by the petitioners in Writ

Petition No. 578/2019, after the premises were sealed, was also rejected by the learned Sessions Judge vide order dated 9th January 2019.

10 The question is, whether the application filed by the respondent-State under Section 105E Cr.P.C was maintainable. The said provision falls under Chapter VIIA, which deals with reciprocal arrangements for assistance in certain matters and procedure for attachment and forfeiture of property. Sections 105A to 105L pertain to procedure to be adopted in cases where the property is situated within and outside India. A perusal of the said provisions clearly shows that the said provisions relate to attachment and forfeiture of property within and outside India, where there is reciprocal arrangements with other countries.

11 Learned A.P.P also does not dispute the fact that the application filed by the State was misconceived in law.

12 As far as Section 18(1) of PITA is concerned, admittedly, no application was filed by the respondent-State under Section 18 of the PITA. As noted above, the application was filed for sealing of the premises under Section 105E Cr.P.C. It is pertinent to note that the police had also given

their no objection on the application filed by the petitioners in Writ Petition No. 578/2019, on certain conditions as may be imposed by the Court. As noted above, the petitioners in Writ Petition 578/2019 are the owners of the said premises, who had given the premises on leave and license basis to the firm-M/s. ACE Hair and Skin Lounge. The said Agreement was for a period of three years i.e. from 1st March 2016 to 28th February 2019. The submission of the learned counsel for the respondent Nos. 3 and 4 in Writ Petition No. 578/2019 and petitioner in Writ Petition No. 693/2019 is, that the possession of the said premises be handed over to them, as there is a dispute between the parties, which can only be decided by the Competent Authority.

13 I have already noted above that the application filed by the police i.e. the respondent-State under Section 105E of the Cr.P.C was clearly not maintainable, despite the same, learned Sessions Judge proceeded to pass the impugned order dated 11th September 2018 and sealed the said premises under Section 105E Cr.P.C. It is pertinent to note that the premises has been sealed under Section 105E of Cr.P.C and not under Section 18(1) of PITA.

14 In the present case, the petitioners had filed an application under Section 457 Cr.P.C for return of the property. Section 457 reads thus :

“457. Procedure by police upon seizure of property.-

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

15 The language used in the Section 452 is, delivery of property to the persons entitled to the possession thereof. The petitioner in Writ Petition No. 693/2019 is claiming possession of the said property on the basis of the Leave and License Agreement, whereas, the petitioners in Writ Petition No. 578/2019 are claiming possession of the property on the basis of their ownership to the said premises. The petitioners in Writ Petition No. 578/2019 are admittedly the owners of the premises. In the facts, the petitioners in Writ Petition No. 578/2019 are entitled to be handed over

possession of the said premises, subject to certain terms and conditions. Needless to state, that it is always open for the petitioner in Writ Petition No. 693/2019 and respondent Nos. 3 and 4 in Writ Petition No. 578/2019 to file appropriate proceedings in connection with the Leave and License Agreement entered into between the parties, before the Competent Authority, in accordance with law.

16 As noted above, since the impugned orders dated 11th September 2018 and 9th January 2019 are unsustainable, the petitions are allowed and are disposed of on the following terms and conditions :

ORDER

- (1) Writ Petition No. 578/2019 is allowed;
- (2) The impugned orders dated 11th September 2018 passed in Misc. Application No. 61/2018 and Misc. Application No. 114/2018 and 9th January 2019 passed in Misc. Application No. 194/2018, by the learned Additional Sessions Judge, City Civil and Sessions Court, Borivali Division, Dindoshi, are quashed and set-aside;
- (3) The petitioners in Writ Petition No. 578/2019 be handed over the possession of the premises i.e. shop No. 6, Plot No. 179, Satra

Park, TPS III, Kastur Park, Opp. Veg Treat One Hotel, Shimpoli, Borivali (West), Mumbai-400 092, on such terms and conditions as the learned trial Judge may deem fit and proper;

(4) Before possession of the premises is handed over to the petitioners, the police to conduct a panchanama and hand over all the belongings in the said premises to the respondent Nos. 3 and 4 in Writ Petition No. 578/2018 and petitioner-Kunal Varma in Writ Petition No. 698/2019.

(5) Writ Petition No. 693/2019 is dismissed.

All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.