

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.32463 of 2004
and
W.P.M.P.No.39329 of 2004

R. kamala Sekar (leaseholder)
Royal Lodge
Mamallapuram,
Kancheepuram District

... Petitioner

/vs/

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2. Deputy Superintendent of Police,
CB-CID ATC,
Chennai 600 002

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the proceedings in Na.Ka.No.M1/30786/2004 dated 27.10.2004 passed by the first respondent and quash the same.

For Petitioner : Mr. S.Shanmugavalayutham
Sr. Counsel , for
M. Kamalanathan

For Respondents :Mr. I.Sathish,
Additional Government Pleader

O R D E R

This writ petition has been filed challenging the order passed by the first respondent/ District Collector under Section 18(1)(a) of the Immoral Traffic (Prevention) Act (herein after called "Act") directing the petitioner to close the lodge within a period of seven days.

2. According to the petitioner, the petitioner is a lessee in respect of one Royal Lodge, Mamallapuram under one Shyamdas, who is the owner of the lodge, and running the same for more than 30 years without any complaint whatsoever. On 11.02.2004, at 12.30 p.m., a raid was conducted on the said lodge, and it was found that the lodge was used for prostitution. Thereafter, the second respondent has registered a case against the petitioner for the offences under Sections 3(2)(a), 4(1), 5(1), 6(1), 7(2)(b) and 8(a) of the Immoral Traffic (Prevention) Act 1956. Now, based on that information given by the second respondent, the first respondent issued a show cause notice under Section 18(1) of the Act to the said Shyamdas, the owner of the lodge, and he participated in the enquiry and has given explanation stating that the said lodge was not used for any prostitution, a false case has been foisted against him. However, without considering the objection in proper perspective, the impugned order has been passed under Section 18(1)(a) of the Act. Now, challenging the same, the present writ petition has been filed.

3. Mr. S. Shanmugavelayutham, learned Senior Counsel appearing for the petitioner would submit that based on the information given by the second respondent regarding the criminal case registered against the petitioner and others for the offences under Sections 3(2)(a), 4(1), 5(1), 6(1), 7(2)(b) and 8(a) of the Immoral Traffic (Prevention) Act 1956, the impugned order has been passed. Apart from that absolutely, there is no material available on record to show that the petitioner was using the lodge for prostitution. The above said criminal case has been taken cognizance in C.C.No.314 of 2010, on the file of the Judicial Magistrate No.I, Chengalpattu. There are totally 7 accused and the petitioner was arrayed as A1. After a full fledged trial, the trial Court acquitted all the accused by a judgment dated 03.12.2010 on the ground that there is no material available on record to found them guilty for the above said offences and that the said judgment has become final. As the proceedings under Section 18(1) of the Act has been initiated based on the said criminal case, now the said criminal case has also been ended in honourable acquittal, the impugned order is liable to be set aside.

4. The learned Additional Government Pleader appearing for the respondents would submit that, earlier a raid was conducted by the second respondent in the lodge being run by the petitioner, and found that the lodge was used for prostitution. A criminal case has been registered against the petitioner and 6 others, and based on that information given by the second respondent, proceedings under Section 18(1) of the Act has been initiated. Merely because the petitioner was acquitted from the criminal case, he cannot escaped from the liability under Section 18(1) of the Act.

5. I have considered the rival submissions and perused the materials available on record.

6. The allegation against the petitioner is that the petitioner has been running a lodge in Mamallapuram, in which he engaged in prostitution, A police raid was conducted by the second respondent, wherein 3 persons were found in one of the rooms in the lodge alleged to have been involved in prostitution. Based on that, the petitioner was also made as an accused in the criminal case. Based on that criminal case, proceedings under Section 18(1) of the Act has been initiated against the petitioner by the first respondent. Now it is submitted that the said criminal case initiated against the petitioner was ended in acquittal on the ground that there is no evidence available on record to show that the petitioner was running brothel.

7. Now the question arises for consideration is that, whether any material available on record to show that the lodge was allowed to be used for prostitution warranting an action under Section 18 of the Act.

Section 2(a) of the Act defines "brothel" as follows :

"(a) " brothel" includes any house, room, [conveyance] or place or any portion of any house, room [conveyance] or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes;

Section 18 of the Act deals with closure of the brothel house and eviction of offenders from the premises, which reads as follows :

"18. (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 metres] 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 incharge 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, the magistrate may pass orders";

8. A cursory reading of the above provisions clearly shows that before passing any order under Section 18 of the Act, the Executive Magistrate should satisfy himself from the materials available on record that the premises was being used for a brothel or for carrying on prostitution. But from the impugned order, it is seen that except the criminal complaint, absolutely, there is no other material available on record to show that the petitioner was engaged in prostitution. Now the criminal case ended in acquittal. In absence of any other material to show that the petitioner permitted to use the lodge for carrying on brothel, based on the criminal case, which ended in acquittal, the first respondent is not justified in passing the impugned order. In the above circumstances, I am inclined to set-aside the impugned order passed by the first respondent.

9. Accordingly, the writ petition is allowed and the impugned order passed by the first respondent in Na.Ka.No.M1/30786/2004 dated 27.10.2004 is set-aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrp
To

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
2. Deputy Superintendent of Police,
CB-CID ATC,
Chennai 600 002

+1 cc to Government Pleader Sr.No. 81570
+1cc to Mr.M.Kamalanathan , Advocate SR.No. 80952
W.P.No.32463 of 2004
and
W.P.M.P.No.39329 of 2004

A.SK(02/12/2019)