

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1618 OF 2019

PARVEEN BABU SHAIKH)
Aged about 50 years, Occ:Housewife)
residing at C.T.S.No.224, House)
no.113, Thakre road, Bhadrakali)
Taluka & District Nashik.) **PETITIONER.**

V/s.

THE STATE OF MAHARASHTRA)
(At the instance of Bhadrakali)
police station, Nashik) **...RESPONDENT.**

Mr.Chetan S.Damre, Advocate for the Petitioner.

Mr.H.E.Palwe for the Intervenor i/b Advocate Mr.Kalantri.

Mr.R.M.Pethe, APP for the Respondent/State.

CORAM : A. M. BADAR, J.

DATE : 25TH FEBRUARY 2020.

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith.

Heard finally by consent of the parties.

2. The petitioner herein has impugned the order passed under Section 18 of the Immoral Trafficking (Prevention) Act, 1956 (to be referred to as I.T.P. Act for the sake of brevity) by the learned Judicial Magistrate First Class, Nashik on 13th March 2019 thereby accepting the proposal submitted by the Police Inspector (Crimes) Bhadrakali Police Station, Nashik city and attaching the premises bearing Survey No.224, Hissa No.113 situated at Pimpal chowk, Navapura, Thakre galli, Nashik for a period of one year with further direction to the petitioner to obtain prior permission of the learned Magistrate before letting the same within a period of one year from the date of the order. The impugned order further directs the occupants to vacate the premises within a period of 7 days from the date of the impugned order.

3. Facts dealing to the institution of the present petition are thus;

One Kamlesh Uttam Bhillore alias Pardeshi and others preferred criminal writ petition bearing No.4552 of 2018 in this court to ventilate their grievance that business of prostitution is being carried out in their neighborhood and the police authority should be directed to take action under Section 18 under the I.T.P. Act. Learned division bench of this court, vide order dated 04.01.2019 was pleased to direct the petitioners therein to make proper representation bringing on record necessary facts so as to enable authorities to consider their request for initiating steps under Section 18 of I.T.P.Act. The police was directed to consider such representation in accordance with law within next six weeks. That is how the proposal came to be moved by the Police Inspector (Crimes), Bhadrakali Police Station, Nashik city before the learned Judicial Magistrate, First Class, Court No.2, Nashik for invoking the powers under Section 18 of the

I.T.P.Act. Learned Judicial Magistrate, First Class issued show cause notices to the landlord and the persons in-charge of the premises and ultimately passed the impugned order directing attachment of the premises. Other directions were also given for vacating the premises as well as for obtaining prior permission of the learned Magistrate before letting out the premises after a period of one year.

4. Heard learned counsel for the petitioner. He argued that the impugned order is nullity and the same deserves to be quashed and set aside in the light of the provision of Section 18 r/w Schedule to the I.T.P.Act.

5. Learned Additional Public Prosecutor supported the impugned order and also contended that the authorities shall take necessary action in the matter. I have also heard the learned counsel appearing for the Intervenor. He argued that the extra-ordinary powers of this court should not be

exercised in the case in hand, though the impugned order may not be strictly according to the provisions of law. According to the learned counsel for the Intervenor, the premises are being used for prostitution causing serious inconvenience to the nearby residences. The subject premises are located in the heart of the residential area of the city and therefore, the petition deserves to be dismissed.

6. I have considered the submissions so advanced and also perused the material placed on record.

7. It is trite that when the Statute prescribes a particular thing to be done in a particular manner then such thing should be done in the manner prescribed by the Statute or it should not be done at all. Section 18 of the I.T.P. Act empowers the learned Magistrate to take action as per the provisions of that section. Learned Magistrate on receipt of information that any house, room or place is being used as a

brothel or is being used by the prostitutes for carrying on their trade, can issue notice to the owner, lessor or landlord of such premises. Learned Magistrate then after considering the reply to such show cause notice and after hearing the person concerned, can pass the order directing eviction of the occupier. Schedule to the I.T.P.Act deals with a Magistrate who is competent to exercise powers under the said Act. The term 'Magistrate' is defined by Section 2(c) of the I.T.P.Act. As per this Section, a "Magistrate" means a Magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule. So far as Section 18 of the I.T.P.Act is concerned, as per provision of the Schedule appended to the I.T.P.Act, powers are to be exercised by the District Magistrate or sub-divisional Magistrate. Such powers are not to be exercised by the Judicial Magistrate, First Class.

8. Learned counsel for the petitioner has rightly relied on the paragraph 15 of the Judgment in the matter of **Sunny Kamalsingh Mathur Vs. Office of the Commissioner of Police, (2009)3 Mah LJ 836** which reads thus;

15. In view of a drastic shift that has occurred in the jurisdiction/power to conduct trials under sections 3 and 7 of the Act due to amendment of section 22 of the Act made effective from 2nd October 1979, whereby words Magistrate as defined in clause (c) of section 2 have been substituted by words “a Metropolitan Magistrate or a Judicial Magistrate of First Class”, the scheme of section 8 of the Act is now as under

(a) Sub-section (1) of section 18:

This power is preventive in nature and can be exercised by “a Magistrate” (S.2(c) r/w the Schedule to the said Act) i.e. by a District Magistrate or Sub Divisional Magistrate. Before passing an order, in addition to the other requirements of this provision, such a Magistrate has to issue a show cause notice as contemplated by section 18(1), hear the person concerned and record his satisfaction as contemplated by the said provision. An action under this provision can be taken irrespective of whether an action under sections 3 and/or 7 of the said Act are taken or not i.e. even when a matter is pending in the court u/s 3 and/or 7 of the said Act.

(b) Sub-section (2) of section 18:

This power is punitive in nature and can be exercised only by “a Court” not inferior to conferred by this provision under section 18(1) only when a person is convicted of an offence under section 3 or 7 of the said Act. It is open for such ‘a Court’ to pass an order in exercise of power conferred by this provision even without further notice to such a person against whom the order is being passed, to show cause as required by sub-section 1 of section 18.

9. In this view of the matter, the impugned order passed by the learned Judicial Magistrate, First Class, Nashik can not be sustained. Hence, the order.

ORDER

- i) Petition is allowed and rule is made absolute in terms of prayer clause (b).
- ii) Needless to mention that the authorities are free to take action according to the law.

(A. M. BADAR, J.)