

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5221 OF 2019

SHIVRAM JANE GOUDA)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ganesh Gole i/b. Mr.Aarif Ali, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent – State.

Mr.A.N.Palande, Police Sub-Inspector, Dr.D.B.Marg Police Station,
is present in court.

CORAM : A. M. BADAR, J.

DATE : 3rd JANUARY 2020

P.C. :

1 By this petition, the petitioner/acquitted accused in Criminal Case No.5400504/PW/2013 is challenging Clause (12) of the impugned order whereby the learned trial Magistrate had directed the Senior Police Inspector of D.B.Marg Police Station to take necessary steps forthwith for closing and sealing Room No.1,

Ground Floor, Manik Building, Grant Road, Mumbai, as per Section 18(2) of the Immoral Traffic (Prevention) Act and to report compliance to the learned trial Magistrate within seven days. By this impugned judgment and order, the learned trial court convicted accused no.1 Maya Anant Adivasi for offences punishable under Sections 3(1) and 4(1) of the Immoral Traffic (Prevention) Act, 1956. However, accused nos.2 and 3 came to be acquitted for offences alleged against them. The petition is by accused no.3 Shivram Gouda, who came to be acquitted of offences alleged against him punishable under the Immoral Traffic (Prevention) Act.

2 Heard the learned counsel appearing for the petitioner/acquitted accused no.3. He vehemently argued that proviso clause to sub-section (1) of Section 18 of the Immoral Traffic (Prevention) Act makes it clear that if owner, lessor or landlord of the premises is found innocent, then said premises needs to be restored to him. In submission of the learned counsel for the petitioner/acquitted accused no.3, the petitioner herein,

who was prosecuted for offences punishable under the Immoral Traffic (Prevention) Act came to be acquitted by the impugned judgment and order, and therefore, the learned trial court ought not to have directed the police for closing and sealing the premises, which are owned by the petitioner/acquitted accused no.3.

3 The learned APP opposed the petition.

4 I have considered the submissions so advanced and perused the impugned judgment and order. Undisputedly, accused no.1 Maya Anant Adivasi came to be convicted for offences punishable under Sections 3(1) and 4(1) of the Immoral Traffic (Prevention) Act. The learned trial court came to the conclusion that the premises were used for prostitution.

5 Sub-section (2) of Section 18 of the Immoral Traffic (Prevention) Act, 1956 needs reproduction for proper appreciation of the controversy involved in the instant petition. It reads thus :

“(2) A Court convicting a person of any offence under section 3 or section 7 may pass order under sub-section (1), without further notice to such person to show cause as required in that sub-section.”

It is, thus, clear that, the learned trial Magistrate is empowered to pass order under Section 18(2) of the Immoral Traffic (Prevention) Act whenever it is found that offence punishable under Section 3 or Section 7 is proved against the accused person. In the case in hand, accused no.1 was found to be indulging in prostitution in the premises in question. Sub-section (3) of Section 18 requires that only in the event of allowing the appeal challenging the said conviction and resultant sentence, the premises can be restored to the owner or possessor.

6 In this view of the matter, it cannot be said that merely because the petitioner is acquitted of the offence alleged against him, the learned trial Magistrate was not competent to pass the order under Section 18(2) of the Immoral Traffic (Prevention) Act.

7 The petition is devoid of merits and therefore, the
order :

ORDER

The petition is dismissed.

(A. M. BADAR, J.)