

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 203 OF 2021

Kasmiribai Rumalsing Uchiya

vs.

State of Maharashtra through PSO PS Sadar Chaoni, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R. M. Patwardhan, Advocate for petitioner.
Mr. S. D. Sirpurkar, APP for sole respondent.

CORAM : MANISH PITALE J.

DATE : 15/07/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this petition, the petitioner has challenged order dated 12/02/2021, passed by the respondent State through Commissioner under Section 18(1) (a) and (b) of the Immoral Traffic (Prevention) Act, 1956.

3. By exercising power under the said provision, the respondent has sealed the premises in question, as according to material available with the

respondent, the same was being used as a brothel. The learned counsel appearing for the petitioner submits that impugned order deserves to be set aside only on the ground that hearing as contemplated under Section 18(1) of the said Act was not afforded to the petitioner.

4. It was further submitted that in the reply filed in response to the notice issued by this Court, the respondent has made false statement that due to unavailability of the petitioner, the impugned order could not be properly executed and that the premises were still under the lock of the petitioner herself. It was submitted that since the mandatory requirement of granting hearing as contemplated under Section 18(1) of the aforesaid Act was not satisfied, the impugned order deserves to be set aside.

5. The learned APP responded by inviting attention of this Court to the reply filed on behalf of the respondent State. It was brought to the notice of this Court that despite efforts made, the petitioner evaded service of notice. Despite the said tactics adopted by the petitioner, the respondent was able to serve notice upon the niece of the petitioner and the fact that the petitioner had complete knowledge, was evident from filing of reply on her behalf by her

Advocate on 28/12/2020. Ultimately the show-cause notice and letter asking the petitioner to remain present before the office of the respondent had to be pasted on a conspicuous part of the premises. On this basis, it was submitted that the requirement of the aforesaid provision was satisfied and no fault could be found with the impugned order. Along with the reply, the respondent State has annexed a crime chart showing a number of cases registered and pending against the petitioner for various offences, specifically offences under the aforesaid Act involving immoral trafficking.

6. An additional submission is filed on behalf of the petitioner to claim that false statement has been made in reply filed on behalf of the respondent State as regards the actual execution of the impugned order.

7. Having heard the learned counsel for the rival parties and upon perusal of the material on record it appears that offence came to be registered as Crime No.0654/2020 dated 21/10/2020 under Section 370(3) and 376 of the Indian Penal Code and Sections 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956. It is during the course of investigation that it was revealed that the premises in

question owned by the petitioner were allegedly being used for prostitution.

8. It is in the backdrop of the aforesaid investigation into the said crime that the respondent exercised power under Section 18 of the said Act to pass the impugned order.

9. The principal contention raised on behalf of the petitioner is regarding failure on the part of the respondent to abide by the mandatory requirement of granting hearing to the person concerned, in this case the petitioner, before passing an order under Section 18(1) of the said Act. A perusal of the impugned order does show that a reference is made as to the manner in which notice had to be affixed on conspicuous part of the premises due to the petitioner evading service of notice of hearing and the panchnama prepared in that regard. As noted above, in the reply filed on behalf of the respondent State, details of the efforts made to serve notice upon the petitioner have been placed on record.

10. Relevant portion of the reply filed on behalf of the respondent State reads as follows :-

“9. It is further submitted that copy of the show cause notice dated 23.12.2020 was also

*served upon the niece of the Petitioner namely Govind Viru Uchiya bearing Mob.No.8237123212 and 9764198911 on 25.12.2020. The copy with above said acknowledgment is annexed herewith as **Annexure-R-V**. It is thus can be seen that all efforts were done to inform the Petitioner and she was having complete knowledge of the above mentioned offence registered and the proceeding initiated under Immoral Traffic (Prevention) Act against her house property, which was being used for the purpose of Prostitution.*

*10. It is thus having complete knowledge the Petitioner submitted her reply dated 28.12.2020 through her Advocate Anand Burhade to the show Cause Notice, which bears her left hand thumb impression. Thereafter by notice dated 15.01.2021 Petitioner was intimated to remain present at C.P. office on 18.01.2021 in person or through Advocate. But as the Petitioner was absconding, said letter and show cause notice came to be affixed on the conspicuous part of her house, recording panchnama in presence of panchas. The copy of the said Panchnama dated 18.01.2021, Photograph of execution and letter dated 15.01.21 and is annexed herewith as **Annexure-R-VI**. It is submitted that the Petitioner did not remain present for hearing in person or through Advocate in spite of giving opportunity as she was absconding and wanted in other offence. It is therefore not true to say that opportunity of hearing has not been given to her.*

*11. It is thus the Final order dated 12.02.21 under section 18(1)(a)(b) of Immoral Traffic (Prevention) Act 1956 came to be issued, but as the Petitioner was absconding same is again came to be affixed on the conspicuous part of her house by conducting panchnama in presence of Panchas on 15.02.2021. The Copy of the said Panchnama and Photograph dated 15.02.21 are collectively annexed herewith as **Annexure-R-VII.**"*

11. In view of the above, this Court is satisfied that the only ground of challenge raised in the present petition is not sustainable. In the facts and circumstances of the present case, the impression gathered by this Court is that the petitioner deliberately evaded service of notice and after the impugned order was passed, a ground is sought to be raised regarding violation of the mandatory requirement under Section 18(1) of the said Act for grant of hearing before passing of the order. The said ground is not made out on behalf of the petitioner in the facts and circumstances of the present case. This Court has also taken note of the fact that number of offences have been registered against the petitioner for offences under the aforesaid Act from the year 2007 till the year 2020. The antecedents of the petitioner are evident from the aforesaid crime chart placed on record with the reply.

12. As regards the controversy about whether the impugned order was executed or not, it would be appropriate to observe that since this Court does not find any reason to interfere with the impugned order, if the same has not been executed, it shall be executed by the respondent State.

13. Writ Petition is dismissed. No order as to costs.

JUDGE