

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2297 OF 2022

1. P. Anita Shriniwas Rao
2. Paramata Srinivasarao ...Petitioners
Versus
State Of Maharashtra ...Respondent

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Mr. Prabhanjay R. Dave, Advocate for the Petitioners.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 26th JULY, 2022.

PER COURT:

1. The petitioners have challenged the order dated 21st April, 2021 passed by the Special Judge, under POCSO Act, 2012, Greater Mumbai in POCSO Special Case No.527 of 2015 to the extent of directions issued to Senior Inspector of Nagpada Police Station, about the closure of Room Nos. 11 and 12, situated at Bori Chawl, 1st Floor, Opposite Apollo Hotel, 11th Lane, Kamathipura, Nagpada, Mumbai, within a period of 7 days from the date of order. The said order was passed in exercise of powers under Section 18 of the Immoral Traffic (Prevention) Act, 1956 (for short 'PITA Act').

2. The petitioners contend that, they were required to shift at her native place in Andhra Pradesh and let out their room premises

bearing Room Nos. 11 and 12, Bori Chawl, 1st Floor, Opposite Apollo Hotel, 11th Lane, Kamathipura, Nagpada, Mumbai, to Sandhya Satyanarayan Gauda for residential purpose. Leave and License agreement was executed between petitioners and the licensee. Subsequently, the petitioners learnt that the officers of Nagpada Police Station raided the said premises and accosted 2 Bangladeshi women indulging in prostitution activity. The licensee Sandhya Satyanarayan Gauda was arrested in the said case. The FIR was registered on 21st July, 2015 vide C.R. No.309 of 2015. The petitioners directed the tenant to vacate the premises and took the possession of the said premises. The petitioners occupied the said premises. On completing investigation, police filed charge-sheet. Accused Sandhya Satyanarayan Gauda was prosecuted for offences punishable under Section 370 of Indian Penal Code and Section 6 r/w 16 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) and Sections 3, 4, 5, 6 & 7 of the The Immoral Traffic (Prevention) Act, 1956 (for short ‘PITA Act’).

3. Vide judgment and order dated 21st April, 2022 the accused was convicted for offence punishable under Section 370 of Indian Penal Code and Sections 3, 4, 5(1)(a) of the PITA Act and they were sentenced to suffer imprisonment. Vide judgment and order

dated 21st April, 2022 the Special Court also directed the Senior Inspector of Nagpada Police Station that, after evicting the occupiers of brothels i.e. Room Nos. 11 and 12, Bori Chawl, 1st Floor, Opposite Apollo Hotel, 11th Lane, Kamathipura, Nagpada, Mumbai, ensure closure of the said premises within a period of 7 days from the date of the order.

4. Learned Advocate for the petitioners submitted that the order evicting the occupiers of the premises is illegal. The petitioners were neither the accused nor the witnesses in the said prosecution. They were unaware about the status of the investigation. The premises was let out on leave and license basis. They are the owners and occupiers of Room Nos. 11 and 12, Bori Chawl, 1st Floor, Opposite Apollo Hotel, 11th Lane, Kamathipura, Nagpada, Mumbai. The statements of the petitioners were not recorded during investigation. No inquiry was conducted under Section 18 of the PITA Act. The FIR was registered in 2015. The order under Section 18 of the PITA Act passed on 21st April, 2022, the petitioners have been evicted from the said premises. In similar case the owner of the premises i.e. Room Nos.15 & 17 Situated at Pandu Maharaj Chawl, Sukhalaji Street, Kamathipura, Mumbai, were directed to be closed vide the said judgment and order dated 4th August, 2021. One of the aggrieved person had preferred the

petition before this Court viz. Criminal Writ Petition No.808 of 2022. The said petition has been allowed by order dated 2nd May, 2022 by setting aside the direction of closure of the premises bearing Room No.17, situated at Pandu Maharaj Chawl, Sukhalaji Street, Kamathipura, Mumbai, and this Court had directed to desal the said premises.

5. Learned APP submitted that the premises was used as brothel. The petitioners had let out the premises to the accused. They cannot feign ignorance.

6. The observations made in order dated 2nd May, 2022 are squarely applicable in the present case. This Court had observed that, Section 18 of the PITA Act, empowers the Magistrate to direct eviction of the occupier of the premises which is being used as brothel by any person or used by prostitutes for carrying prostitution activities, after giving notice to the owner, lessor, landlord, tenant or lessee of the occupier of such premises to show cause on the premises should not be attached for improper use. The provision also empowers the Magistrate to direct that the owner, lessor, landlord or agent of the owner shall obtain previous approval of the Magistrate before letting out the premises. The provision also empowers a Court convicting a person of any offence punishable under Section 3 or Section 7 to pass an order under

sub-section (1) of Section 18 without further notice to such person to show cause, as required by sub-section (1). Sub-section(3) provides that, such an order sub-section (1) or sub-section (2) shall not be subject to appeal, nor such an order be stayed or set aside by the order of any Court and it shall cease to have validity after the expiry of one year or three years as the case may be. It is further observed that the sub-section (1) and sub-section (2) of Section 18, operate in different spheres. The order under sub-section (2) of Section 18 can be passed by a Court only against the person who is convicted for the offences punishable under Sections 3 or 7 of the PITA Act. Where an order of closure of the premises operates to the prejudice of the occupier, who is not prosecuted for offence punishable under Sections 3 or Section 7 of the PITA Act, different considerations came into play. In such a situation, the requirement of opportunity of hearing under sub-section (1) of Section 18 is mandatory.

7. The aforesaid observations are applicable to the present case. The petitioners were not impleaded as accused or cited as a witness in the aforesaid case. No notice under sub-section (1) of Section 18 was given to the petitioners. No opportunity of hearing was given to the petitioners. The impugned order does not indicate that the Court had considered the period for which the order of

closure would operate. The accused in the said case were acquitted for offences punishable under Sections 4, 6 & 17 of the POCSO Act. None of the victims were minor. At the most the order would have been in operation for one year. Hence, the impugned order of the closure of the premises deserves to be set aside.

ORDER

- i.** Criminal Writ Petition No.2297 of 2022 is allowed;
- ii.** The directions issued by the learned Special Judge under POCSO Act, Greater Bombay, in POCSO Special Case No.527 of 2015 vide judgment and order dated 21st April, 2022, to the extent of directing Senior Inspector of Nagpada Police Station to close the Room Nos. 11 and 12, situated at Bori Chawl, 1st Floor, Opposite Apollo Hotel, 11th Lane, Kamathipura, Nagpada, Mumbai, after evicting the occupiers is set aside.
- iii.** The premises viz. Room Nos. 11 and 12, situated at Bori Chawl, 1st Floor, Opposite Apollo Hotel, 11th Lane, Kamathipura, Nagpada, Mumbai, be de-sealed and handed over to the petitioners;
- iv.** Criminal Writ Petition No.2297 of 2022 is disposed of.

(PRAKASH D. NAIK, J.)