

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2304 OF 2022

Mainavati Krishnappa Goda ...Petitioner
Versus
The State Of Maharashtra ...Respondent

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

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 petitioner challenges the order dated 4th August, 2021 passed by the Special Judge, under POCSO Act, Greater Mumbai in Special POCSO Case No.297 of 2015 to the extent of directions issued to senior Inspector of Police, Nagpada Police Station, to close of Room No.15 Situated at Pandu Maharaj Chawl, Sukhalaji Street, Kamathipura, Mumbai, after evicting the occupiers, if any, 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 petitioner contend that she was required to shift at her native place in Karnataka and let out her room premises bearing Room No. 15, First Floor, Pandu Maharaj Chawl, Kamathipura,

Sukhalaji Street, Mumbai to Pintu Mathura Sav for residential purpose. Leave and License agreement was executed between the petitioner and the licensee. Subsequently, the petitioner learnt that the officers of Nagpada Police Station raided the said premises and accosted 5 Bangladeshi women indulging in prostitution activity. The licensee Pintu Mathura Sav was arrested in the said case. The FIR was registered on 13th March, 2015 vide C.R. No.109 of 2015. The petitioner directed the tenant to vacate the premises and took the possession of the said premises. The petitioner occupied the said premises. On completing investigation, police filed charge-sheet. Accused Moti @ Babu Galeshwar Razak @ Dhobi and Pintu Mathura Sav were prosecuted for offences punishable under Section 370 r/w Section 34 of Indian Penal Code and Sections 3, 4, 5, 6(3)(a) & 7 of the PITA Act and Sections 4, 6 & 17 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

3. Vide judgment and order dated 28th July, 2021 the accused therein were convicted for offence punishable under Section 370 r/w Section 34 of Indian Penal Code and Sections 3, 4, 5, 6(3)(a) of PITA Act and they were sentenced to suffer imprisonment. Vide judgment and order dated 4th August, 2021, the Special Court also directed the Senior Inspector of Police, Nagpada Police Station to

close room Nos.15 & 17 situated at Pandu Maharaj Chawl, Sukhlaji Street, Kamathipura, Mumbai after evicting the occupiers, if any and ensure closure of the premises.

4. Learned Advocate for the petitioner submitted that the order evicting the occupiers of the premises is illegal. The petitioner was neither the accused nor the witness in the said prosecution. She was unaware about the status of the investigation. The premises was let out on leave and license basis. She is the owner and occupier of the room No.15, situated at the place mentioned herein above. Statement of the petitioner was 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 4th August, 2021. The petitioner has been evicted from the said premises. The owner of the adjacent premises i.e. Room No.17 which is also directed to be closed vide the said judgment and order dated 4th August, 2021 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, Nagpada, Mumbai and this Court had directed to desal the said premises.

5. Learned APP submitted that the premises was used as brothel. The petitioner had let out the premises to the accused. She cannot feign ignorance that she was not aware about using premises as brothel.

6. The owner of premises, i.e. Room No.17 which is subject matter of the judgment and order dated 4th August, 2021 passed by the POCSO Special Case No.297 of 2015 had preferred Criminal Writ Petition No.808 of 2022. The observations made in order dated 2nd May, 2022 are squarely applicable in the present case. The impugned directions are set aside by this Court in the petition preferred by the other owner. 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 petitioner was 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 petitioner. No opportunity of hearing was given to the petitioner. 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.2304 of 2022 is allowed;
- ii.** The directions issued by the learned Special Judge under POCSO Act, Greater Bombay, in Special POCSO Case No.297 of 2015 vide judgment and order dated 4th August, 2021 to the extent of directing Senior Inspector of Police Nagpada Police Station to close Room No.15, situated at Pandu Maharaj Chawl, Sukhalaji Street, Kamathipura, Mumbai, after evicting the occupiers is set aside.
- iii.** The premises viz. Room No.15, situated at Pandu Maharaj Chawl, Sukhalaji Street, Kamathipura, Mumbai, be de-sealed and handed over to the petitioner;
- iv.** Criminal Writ Petition No.2304 of 2022 is disposed of.

(PRAKASH D. NAIK, J.)