

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL REVISION APPLICATION NO.358 OF 2022**

Pramod Bhausahab Labde,
Age: 50 years, Occu. Business,
R/o. "Labde Patil Niwas", Opposite Shetkari,
Seva Kendra, Shivaji Road, Shrirampur,
Taluka-Shrirampur, Dist. Ahmednagar. ..Applicant

Versus

The State of Maharashtra,
Through Shrirampur Police Station,
Shrirampur, Dist. Ahmednagar ..Respondent

...

Ms. Sakshi A. Kale h/f Mr. A. B. Kale, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondent-State.

...

CORAM : S. G. CHAPALGAONKAR, J.

**RESERVED ON : 22nd AUGUST, 2023.
PRONOUNCED ON : 28th AUGUST, 2023.**

JUDGMENT:-

1. The applicant/original accused no.2 impugns the order dated 06.08.2022 passed on application Exhibit-11 in Sessions Case No.04/2021, whereby the prayer of the applicant seeking discharge under Section 227 of the Cr.P.C. has been turned down by the Sessions Judge at Shrirampur, Dist. Ahmednagar.

2. The case of prosecution is that on 05.11.2020, raid was carried on Panchashil Lodge, Shrirampur. In the backdrop of information suggesting use and premises as brothel, a dummy customer Amit Bansode was deployed, who found three women engaged in prostitution. The accused no.1 runs Lodge as manager and permits such illegal prostitution in his premise. The accused no.2/applicant is owner of the Panchashil Lodge. Initially, the FIR dated 05.11.2020 was registered

for the offences punishable under Section 370 of the Indian Penal Code read with Section 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 against accused no.1 Ganesh Khairnar. On completion of investigation, the charge-sheet is filed adding applicant as accused no.2. The applicant moved an application below Exhibit-11 seeking discharge under Section 227 of the Cr.P.C. contending that he is unconcern with the alleged offence. He was not present when the premise of the Panchashil Lodge was raided. He has appointed accused no.1 as manager, who is looking after day to day business. The CCTV footage and hard disc has been seized during the course of investigation, which would depict that the applicant was not present at the time of alleged incident nor he runs the business. However, Sessions Court after considering the submissions advanced on behalf of the applicant as well as the prosecution, rejected the application below Exhibit-11.

3. Ms. Kale, learned Advocate appearing for the applicant would submit that the ingredients of alleged offence doesn't attracts against the applicant looking to allegation in the FIR or other material in the charge-sheet. She would submit that there is nothing to indicate that the applicant has knowingly permitted the use of his lodge for brothel. She would submit that accused no.1 is looking after day to day business of the Lodge. The applicant resides at different place and do not have any concern with the day to day management of the Panchashil Lodge. Referring to the contents of the FIR, she would submit that even from contents of the entire FIR no role is attributed to the applicant. Only because applicant is owner of the Lodge, no offence can be made out against him, unless the knowledge is attributed regarding the use of the lodge as brothel. Ms. Kale would further invite attention of this Court to the statements of three ladies found at the Panchashil Lodge during the raid. She would submit that all those ladies were em-

ployed for cleaning and maintenance. Under misconception, they are alleged to be in the prostitution. She submits that assuming the contents of the charge-sheet to be true and correct, there is no material to frame charge against the applicant. Hence, urge to discharge applicant.

4. Per contra, learned APP opposes the prayers in the application. She would submit that Section 3 of the Immoral Traffic (Prevention) Act, 1956 provides for punishment to any person, who permits use of premises or any part thereof as a brothel. She would submit that applicant has not denied the ownership of the Panchashil Lodge. Hence, his defense can be tested during the course of trial. There is sufficient material to frame charge against the applicant.

5. Having considered the submissions advanced, apparently the applicant is owner of the Panchashil Lodge. The prosecution case is based on raid where dummy customer was sent to find out the activities at Panchashil Lodge. As per case of prosecution three ladies were engaged in prostitution. On search of lodge incriminating articles were seized that supports the allegations. True that the name of the applicant is not recorded in FIR, since one Ganesh Khairnar was acting as a manager.

6. The name of the applicant is added as accused in the charge-sheet, since he is owner of the Panchashil Lodge. The applicant never denied ownership of lodge. It is sought to be canvassed on behalf of the applicant that the applicant has no role in day to day business of the Panchashil Lodge and he has appointed the manager for that purpose. At this stage, it would suffice to clause (b) of sub-Section 2 of Section 3 of the Immoral Traffic (Prevention) Act, 1956, which categorically states that any person, who being the owner, lessor or landlord of any premises or the agent of such owner, lessor or

landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel shall be punishable on conviction. The most importantly sub-Section 2-A of Section 3 raises presumption that until the contrary is proved that any person referred to in clause (a) or clause (b) of sub-section 2 shall be presumed to have knowledge that the premises or any part thereof is being as a brothel. True that the aforesaid presumption is subject to further requirements. However, at this stage, it would be difficult to accept the contention of the applicant that he had no knowledge about use of his premise for prohibited activities under the Immoral Traffic (Prevention) Act, 1956.

7. The learned Sessions Judge has recorded adequate reasons while rejecting contentions of the applicant, particularly fact that accused no.1 is manager employed by applicant and activities of employees cannot be assumed to be without knowledge of the applicant. All these aspects require trial after framing of charge. At this stage it would be difficult to record any findings or express any opinion regarding sufficiency of the material to bring home guilt against the applicant. Resultantly, no case is made out to cause interference in the impugned order in exercise of revisional jurisdiction. Hence, the same is dismissed.

(S. G. CHAPALGAONKAR)
JUDGE