

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1481 OF 2023

Shirish Shankar Kale .. Petitioner
Versus
The State of Maharashtra .. Respondent

...

Mr.Satyavrat Joshi h/f Mr.Ashish Suresh Vernekar for the
Petitioner.

Mr.S.R.Agarkar, A.P.P. for the State.

PI Dashrath Waghmode, attached to Dighi Police Station,
Pimpri Chinchwad, present.

...

CORAM: BHARATI DANGRE, J.
DATED : 04th MAY, 2023

P.C:-

1. The present petition is filed, being aggrieved by an order dated 16/03/2023, passed by the Commissioner of Police, Pimpri Chinchwad and the Additional District Magistrate under Section 18(1)(a) of the Immoral Traffic (Prevention) Act, 1956 (for short, "**The Act of 1956**"), directing sealing of the premises belonging to the petitioner, being styled as 'Abhishek Hotel and Lodge', Taluka Haveli, District Pune. The basis of the said exercise is an allegation that a raid was conducted in the said premises, where the victim girls were rescued and C.R.No.580 of 2022 came to be registered with Dighi Police Station, invoking Sections 3, 4, 5 and 7 of the Act of 1956. It is alleged that Abhishek Lodge was being used as a

brothel for the purpose of illicit trafficking of women and by the impugned order, the aforesaid premises are directed to be sealed for a period of one year.

2. The learned counsel Mr.Joshi appearing for the petitioner, by inviting my attention to the impugned order, would submit that the order passed is in utter violation of the principles of natural justice, without adhering to the procedural requirement prescribed under Section 18, particularly when serious allegations are levelled that the premises are used for the purpose of brothel. He would submit that on 02/02/2023, a show cause notice under Section 18(1) of the Act of 1956 was issued to the petitioner in the capacity as the owner/occupier of the said lodge, where a raid was conducted on 30/12/2022 and on finding accused Nos.2, 3 and 4 to be involved in immoral trafficking, he was asked to show cause as to why the premises shall not be sealed.

On 22/02/2023, a communication was addressed requesting for two weeks' time to respond to the said notice.

The specific submission is that the order came to be passed on 16/03/2023, without the reply being filed and an opportunity of hearing being afforded.

3. The learned A.P.P. has vehemently opposed the petition and he would submit that the petitioner himself is an accused in the subject C.R. and the offence is of serious nature.

4. It is settled position of law that if the statute requires a particular thing to be done in a particular manner then it is necessarily to be done that a particular manner and in no other way.

Section 18 of the Act of 1956 is a provision, which vest a power in the Magistrate, to close any premises being run or used as a brothel by any person or being used by prostitutes for carrying on their trade and pass appropriate orders. However, Section 18(1) contemplate issuance of show cause notice and it is only after expiry of 7 days of receipt of notice and after hearing the person concerned, if the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass an order direction eviction of the occupier within 7 days of passing of the order or directing that before letting it out during the period of one year, immediately after passing of the order, the owner, lessor or landlord shall obtain previous approval of the Magistrate.

5. In the light of the aforesaid provision, the impugned order suffers from two deficiencies; firstly it being passed without affording any opportunity of hearing to the petitioner and secondly, it directs sealing of the premises for a period of one year, which is not the power bestowed upon the Magistrate under sub-section (1) of Section 18. The only order which Magistrate is empowered to pass on being satisfied that any premises has been used as a brothel by any person or by prostitutes for carrying on their trade, is to direct eviction of the occupier within seven days of the passing of the order from

the house, room, place or portion and directing that before letting it out during the period of one year, immediately after passing of the order, the owner, lessor or landlord shall obtain previous approval of the Magistrate.

Admittedly, the learned A.P.P. concede to the fact that no opportunity of hearing was afforded to the petitioner, though he justify passing of the order after expiry of 15 days from the date on which the time was sought by the petitioner.

6. Since the impugned order is in the teeth of sub-section (1) of Section 18, which necessarily contemplate an order to be passed by the Magistrate, after hearing the person concerned and, since, the petitioner has not filed any reply nor he has been heard, the same cannot be sustained.

In the aforesaid circumstances, the impugned order dated 16/03/2023 is quashed and set aside. However, the petitioner is at liberty to file his reply to the show cause notice within a period of one week from today and upon such response being filed, respondent No.1/the competent authority, after affording an opportunity of hearing to the petitioner, shall pass an appropriate order.

Needless to state that I have not expressed any opinion on the merits of the matter and, hence, the Magistrate is within his powers to pass a fresh order, by taking into consideration the response to the show cause notice.

(SMT. BHARATI DANGRE, J.)