



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

REVISION APPLICATION NO. 35 OF 2021

MAHESH PANJABRAO ANDHALE

..APPLICANT

VS.

1] THE STATE OF MAHARASHTRA

2] XYZ

..RESPONDENTS

Adv. A.R. Avachat a/w Adv. Siddhant Deshpande and Adv.
Vijay Babar for the Applicant.

Adv. Hrishikesh S. Shinde for Respondent No.2.

Mr. A.R. Patil, APP for the State.

PSI Rakesh N., Faraskhana Police Station, Pune City.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 17, 2024

ORAL JUDGMENT:

1. Heard learned counsel for the applicant, learned APP for the state and learned counsel for respondent No.2 who is appointed through legal aid.

2. This Revision Application is filed by the applicant to quash and set aside the order dated 09/02/2021 passed by the trial court rejecting the discharge application preferred by the applicant in Special Case Child Protection No. 82/2019.

3. On 30/11/2018, the First Information Report No. 347

of 2018 came to be lodged against six accused persons with Faraskhana Police Station, Pune, for the offences punishable under sections 188, 376, 344, 366B, 370A(2), 372, 373 read with 34 of the Indian Penal Code and Sections 3, 4, 5, 6 of the Immoral Traffic (Prevention) Act, 1956, (hereafter referred to as "PITA Act"). Later on, offences punishable under Section 14 of the Foreigners Act, 1946 and Sections 3 and 6 of the Foreigners Order, 1998, came to be added.

4. It is the case of the prosecution that the premises that belong to the applicant was used as a brothel and hence the applicant is charged for the offence punishable under section 3 of the PITA Act along with the other offences. The premises which comprise the flat was let out on leave and license basis by a registered agreement dated 20/06/2018 executed between the applicant and accused Biren. Biren occupied the said premises along with his wife who is accused No.1 and their minor son. It is alleged that the victim girl who was 16 years of age was trafficked by the accused No.1 from Bangladesh. The victim started residing in the said flat along with accused No.1 and Biren. It is

alleged that accused No.2- Biren and accused No.1 forced the victim to indulge in acts which constitute offences under the aforesaid sections.

5. The residents of the society where the flat was situated noticed that young male persons were visiting the said flat at regular intervals. From the statement of the applicant, it is seen that the rent was initially paid for three months. However, there was a default on the part of accused No.2- Biren to pay the rent for September 2018 and October 2018. The accused was not responding despite calls made by the applicant. The applicant then was informed by the neighbours about young male persons visiting the said flat at regular intervals. The applicant questioned the accused-Biren and his wife. When they did not give any satisfactory answers the applicant called upon the accused to vacate the flat. Accordingly accused vacated the flat sometime in the second week of November 2018. Factually, the flat was in occupation of the accused No.2 Biren and accused No.1 from the second week of June 2018 upto the second week of November 2018 for 5 months. No

doubt the statement of the applicant-accused has no evidentiary value and in any case nothing turns on the statement of the applicant which is recorded during the course of the investigation.

6. Learned APP and learned counsel for respondent No.2 argued in support of the order passed by the trial court. It is submitted that the applicant is the owner of the flat and hence he is complicit with the other accused in the commission of the offence being the owner of the premises which was used as a brothel. It is submitted that the applicant should have exercised caution by exercising due diligence and informing the police about letting out the premises on leave and license basis which he failed to do so and must be presumed to be aware of the activities the co-accused were indulging in.

7. Heard learned counsel. So far as the applicant is concerned, it is relevant to consider Section 3 of the PITA Act which reads thus:-

"Section 3. Punishment for keeping a brothel or allowing premises to be used as a brothel.

(1) Any person who keeps or manages, or acts or

assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who-

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) 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 wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,-

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the

search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction."

(emphasis mine)

8. In the context of Section 3, it needs to be noted that the statement of the estate agent was recorded by the investigating agency whom the applicant had requested to find a suitable tenant for the premises. The said estate agent had introduced accused No.2- Biren with the present applicant. There is nothing on record to indicate that the applicant had knowledge that the premises was intended to be used as a brothel. Further, there is no material on record to show that the applicant is willfully a party to the use of such premises or any part thereof as a brothel. Merely because the applicant's premises was in occupation of the co-accused who were indulging in the activities which constitute the aforesaid offence will not be sufficient to proceed against the applicant unless the requirements of

Section 3 of the PITA Act necessary to constitute an offence qua the applicant- are satisfied.

9. Let me consider whether there is any material to *prima facie* demonstrate that the conditions spelt out in clauses (a) and (b) of sub-section 2A of Section 3 of the PITA Act are satisfied. There is no report published in the newspaper in terms of sub-section 2A(a) of Section 3 and therefore clause (a) or clause (b) of sub-section 2A of Section 3 of the PITA Act is not attracted. Thus, there is no *prima facie* material to show the complicity of the applicant in terms of what is laid down by Section 3(2)(b) or sub-section 2A(a) or (b) of Section 3 of the PITA Act.

10. Though the leave and license agreement was of 11 months for the premises, the same was vacated by the accused No.2- Biren sometime in the second week of November 2018, that is within a period of five months from its execution. The neighbours have only stated that they noticed young male persons visiting the premises at frequent intervals. The statement of the victim recorded under Section 161 or under Section 164 of the Code of

Criminal Procedure does not incriminate the applicant or indicates his involvement in the offence.

11. There is nothing on record to indicate that the applicant was knowing the co-accused prior to the execution of the leave and license agreement. The applicant was introduced to the co-accused by the estate agent. There is thus absolutely no material to indicate that the applicant had any connection with the co-accused to show his complicity in the aforesaid offence. The mere fact that the appellant is the owner of the premises in question having executed a registered leave and license agreement with the co-accused by itself will not constitute sufficient material to proceed against the applicant in the absence of *prima facie* satisfying the other requirements of Section 3 qua the landlord. Merely because the applicant failed to inform the local police about the execution of the registered leave and license agreement will not take the prosecution case any further as this does not constitute an offence under the PITA Act.

12. As indicated earlier, there is no material on record to

indicate that the applicant has let the premises or any part thereof with the knowledge that the same or any part thereof were intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel. From the materials, as they stand and allegations even if taken at face value, it cannot be said that the ingredients necessary to constitute the alleged offence under section 3 of the PITA Act are made out qua the applicant who is the landlord. None of the conditions enumerated in clauses (a) and (b) mentioned in sub-section 2A of Section 3 are satisfied to attract the presumption that the applicant had knowledge about the premises or any part thereof was being used as a brothel.

13. The application, therefore, deserves to be allowed and is accordingly allowed in terms of prayer clauses (a) and (b) which read thus:-

“(a) that this Hon’ble Court may be pleased to quash and set aside the Impugned Order dated 09/02/2021 rejecting the discharge application of the Applicant in Special Case Child Protection No. 82/2019 pending in the Court of the Ld. Special

Judge, Pune, qua the Applicant.”

“(b) that this Hon’ble Court may be pleased to direct that the Applicant be discharged from Special Case Child Protection No. 82/2019 pending in the Court of the Ld. Special Judge, Pune.”

14. Consequently, the applicant stands discharged in the aforesaid Special Case. The application is disposed of in the above terms.

15. I appreciate the valuable assistance rendered by Advocate Hrishikesh S. Shinde, who appeared on behalf of respondent No.2 in this proceeding.

(M. S. KARNIK, J.)