

(1955) 10 MAD CK 0037
In the Madras High Court

R. Thangavelu Chettiar

APPELLANT

Vs

Commr. of Police

RESPONDENT

Date of Decision : 07-10-1955

Acts Referred:

Citation : (1956) 1 MLJ 220

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Judgement

Rajagopala Ayyangar, J.—It required a lot of courage to have filed this petition for the issue of a writ of certiorari to quash the order of the Commissioner of Police suspending the licence of the petitioner to keep a lodging house, and the petitioner has been equal to it.

2. The petitioner was granted a licence to run a lodging house in the City and he was running it, while so, there was a raid on his premises on 28th May 1955 by the local police and at that raid it was found that there were 11 girls there and 9 of them were occupying 9 of the rooms in that house each with a male person. The register of arrivals maintained at the premises did not contain the names of the girls but showed bogus names.

A sum of Rs. 244 was found in the premises and was seized by the police. There were also four bottles including a water bottle all of which smelt of liquor. In these circumstances, the manager of this lodging house, who is the brother-in-law of the petitioner, and who was running it under the power of attorney granted by the petitioner himself, was arrested under the provisions of the Suppression of the Immoral Traffic Act. He was prosecuted and convicted of an offence of permitting the house to be used as a brothel.

These facts are admitted and not in dispute. Subsequent to the raid and before the termination of the prosecution against the petitioner's brother-in-law, the Assistant Commissioner of Police issued a notice to the petitioner to show cause why the licence granted to him for keeping the lodging house should not be

cancelled for the reason that the raid disclosed that the premises had been used as a brothel house.

The petitioner desired the proceedings to be postponed till the termination of the prosecution but this was refused and the petitioner was directed to submit his explanation and sufficient time given to him for the purpose.

Subsequently the Commissioner passed an order on 5th September 1955 suspending the licence for a period of three months from the date of the receipt of his order. It is this order of suspension whose legality is challenged by the petitioner in this writ petition.

3. Mr. Seshadri his learned Counsel, urged four points in support of the petition. The first was this. The Commissioner of Police has purported to cancel the licence for breach of condition No. 4 of the licence. Condition 4 referred to reads thus:

That he does not wilfully harbour reputed thieves, or disorderly or notorious bad characters in his said house or premises knowing or having reason to believe them to be such or permit any disorderly conduct or any gambling on his said premises.

4. The argument addressed to me with great strenuousness was that none of the ingredients of this condition were satisfied before the Commissioner passed the order. First, that the petitioner was not harbouring any one of the class of persons mentioned in the condition. His argument was that harbouring meant giving aid, succour or protection to persons fleeing justice and that as the persons who occupied the house at the time of the police raid were not criminals or accused in any crime, there could be no harbouring and further that the persons who were found in the petitioner's premises were not reputed thieves or notorious bad characters.

But this argument ignores another limb of the clause which renders the "permitting" of any "disorderly conduct" on the premises a breach of the condition. I do not think it can be argued that the use of the premises for the purposes indicated in the Commissioner's order can be characterised as anything else except the use of the premises for disorderly conduct. "Disorder" in this context does not mean that there should be a rioting or affray.

A bawdy house or a brothel is certainly a "disorderly house." If the premises have been used for such purpose it is sufficient breach of the condition which will attract the power of the Commissioner to cancel it, It was next said that the petitioner did not wilfully harbour the individuals found in his premises taut that as he had left the management of the lodging house to his brother-in-law he could not be held guilty of having "permitted" any of the acts mentioned in the condition.

I cannot agree with this submission of learned Counsel. "Permit" in the context does not require that the licensee should be present on the premises and actively direct the acts mentioned in the condition. On the facts of the present case there

is sufficient connection between the petitioner and the person in charge of the premises as to impute to the former knowledge of what was going on. I therefore hold that the acts of the petitioner constitute a contravention of condition 4 of the licence granted to him.

5. In the light of what I have said above, the next point urged by learned Counsel that if condition No. 4 were read in the manner in which the Commissioner of Police was inclined to read it, it would constitute an invasion of one of the fundamental rights guaranteed by the Constitution does not really arise. But if it did I would only make this remark that the use to which the permits have been put, viz., for running a brothel is not a use of property guaranteed by the Constitution, nor is it a business the right to which is one of those guaranteed by Part III.

Mr. Seshadri urged that if the Commissioner of Police were right, it would mean that if persons who were not husband and wife happened to occupy a room in a lodging house and they were accommodated by the licensee with knowledge of their relationship, the licence could be cancelled. This does not follow but this has no relationship to the facts of this case. A mere perusal of the names of the occupants of the several rooms would negative the possibility of such an argument.

6. The strongest part of learned Counsel's argument related to the construction which he sought to place upon Section 76 of the City Police Act. Section 76 runs in these terms:

For any breach of any of the conditions of a license granted under this Act the offenders shall be liable on conviction to fine not exceeding one hundred rupees and such fine may be recovered from the person licensed notwithstanding that such breach may have been owing to the default or carelessness of his servant or agent in charge of the shop or place. Any person so convicted shall also be liable to the forfeiture of his license at the discretion of the Commissioner.

The argument based on the language of this section was that unless a licensee was convicted by a Magistrate for breach of these conditions, the Commissioner of Police was incompetent to cancel the licence. I do not at all agree that Section 76 embodies the only provision under which a licence could be cancelled.

The licence has been granted to carry on business within the law and if the law is transgressed in the manner of running the business, it is the inherent right of the authority granting the licence or supervising it, to cancel it. I hold that Section 76 is not the sole or exclusive source of power authorising the cancellation of a licence under the City Police Act.

7. It was lastly urged that as the Assistant Commissioner of Police had under the powers delegated to him by the Commissioner u/s 6 of the City Police Act granted the petitioner the licence and imposed the conditions, the cancellation of the licence for breach of the conditions must be only by the Assistant

Commissioner and not by the Commissioner of Police as in the present case.

In order to sustain this point even if there is any merit in it. the exact terms of the delegation under which the Assistant Commissioner of Police was vested with the power to grant the licence should have been placed before the court and unless this were done and the petitioner is able to show that the delegation included the power to cancel the licence, the power of the Commissioner to cancel the licence remains unaffected and he can exercise it notwithstanding that the power to grant the licence has been delegated to the Assistant Commissioner.

8. The points raised in this petition have been made clear that the language of the City police Act and the condition in the licence do need revision. I would draw the attention of Government to this matter to have them rectified at an early date so that the authorities can have power to take suitable action in cases of the type which has come up before the Court in this writ petition.

The petition fails and is dismissed.