
(2019) 08 BOM CK 0022

In the Bombay High Court

Case No : Criminal Writ Petition No. 5853 Of 2018

Savitri @ Sumitra Narayan Gowda

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 3(1), 3(2)(b), 4(1), 5(1)
(a), 7(1), 7(1)(b), 7(2)(c), 15, 18, 18(2), 18(1)(a), 18(1)(b)

Citation : (2019) 08 BOM CK 0022

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : P.R. Dave, G.P. Mulekar

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable and heard with the consent of parties.

2. Brief facts leading for filing the present petition are as under:-

The petitioner is a official tenant in respect of Room No. 429 & 9, Noor Mohammed Beig Compound, Congrees House, in front of Queens Mary School, Mumbai. She is holding the tenancy rights of this two rooms since last more than 30 years. The rent receipt of the said room premises stands on petitioner's name. On earlier, that is in the year 2008, petitioner used to stay alongwith her family at Pandit Mansion, 3rd Floor, Flat No. 7, Near Apsara Talkied, D.B. Marg, Mumbai, and at that point of time she was not in need of her premises situated at Noor Mohammed Building and therefore in March 2008 she had given her room premises for residing purpose to one Kiran Naidu. At the time of giving said premises, a leave and license Agreement dated 12/03/2008 came to be executed between Petitioner and said Kiran Naidu and thereafter the said Agreement was registered with Sub Registrar of Assurances.

3. It is the case of the petitioner that on 16/12/2009 officers of Respondents have conduced raid at the instance of one Anson Thomas at petitioners room

premises, where they found that prostitution business was going on, and accordingly with the help of panch the raid was conducted. During the course of raid, Respondent have rescued 24 women and also arrested three accused by name Kiran Naidu, petitioner herself and one Raju Gupta. In respect of alleged raid, respondent have filed the chargesheet against the arrested accused in the Special PITA Court at Mazgaon/Mumbai. During the course of trial in all six prosecution witnesses came to be examined and two defense witnesses have also been examined and finally on 17/12/2018 Ld. 54Th Magistrate Court was pleased to convict all the accused for the offences punishable under Section 3, 4, 5 & 7 (1) (b) of PITA Act, 1956. The Ld. Magistrate also directed that the place where the offence was committed stands attached under section 18 (2) of PITA Act for the period of one year.

4. It is the case of the petitioner that, in the present case the offence was committed on 16/12/2009 and thereafter the officers of Respondent have sent notice on 4/1/2011 on behalf of Commissioner of Police Mumbai, for eviction and closure of brothel under section 18(1) (a) and 18 (1) (b) of PITA Act, 1956 and pursuant to said notice the petitioners premises was sealed. In fact the said notice dated 4/1/2011 was issued in respect of the present raid of 16/12/2009. Thereafter the petitioner approached this Hon'ble Court by filing Criminal Application No. 34 of 2011 and challenged the legality and validity of the said notice dated 4/1/2011 and on 22/8/2011 this Hon'ble Court was pleased to allow the said Application/Writ Petition, and thereby the Respondents were directed to open the seal.

5. It is submitted that, on earlier occasion this Hon'ble Court was pleased to clearly observed that petitioner had given room premises to one Kiran Naidu on leave and license basis for 22 months, and the said period was to expire on 11/1/2010. In the present case raid was conducted on 16/12/2009 so admittedly, the said premises was within the charge of said Kiran Naidu and present petitioner has nothing to do with said alleged business of prostitution. After considering all circumstances and situation this Court directed to open the seal on petitioners premises. If this is the position then again on the same set of facts, Ld. Magistrate order of directing to seal the premises is absolutely illegal and perverse. It is further submitted that petitioner is bonafied occupier of the said premises and staying with her family at the said premises. Admittedly, rent bill and other documents are in the name of petitioner, and therefore she is entitled for the possession of the said room premises.

6. It is further submitted that the provision of Section 18 of PITA Act, is admittedly prohibitory in nature. The alleged offence was committed on 16/12/2009 i.e. nine years back, and therefore before passing the impugned order, the Ld. Magistrate ought to have taken into consideration the present position of the said premises. Therefore, learned counsel appearing for petitioner submit that writ petition deserves to be allowed.

7. Learned APP appearing for the State, relying upon the affidavit in reply filed

by one Mr. Valmik Ambadas Dhorkule, Police Sub Inspctor, presently attached D.B. Marg Police Station made following submission:-

It is submitted that, FIR came to be registered on 17.12.2009 at instance of D.B. Marg Police Station, Mumbai against the Petitioner and two others for the offences punishable under Section 3, 4, 5 and 7(1) (b) of the Immoral Trafficking (Prevention) Act 1956. It is further submitted that, on 16. 12.2009 on the basis of an information received by local police, a raid was conducted in the Building No. 429 and 9 situated in front of Queen Mary School, at Congress House, Mumbai. The information also revealed that one lady namely Kiran Naide was conducting a brothel i.e. the above premises owned by the petitioner. She used to provide minor girls of the prostitution. After the raid was conducted, on the completion of the formalities of the petitioner and two other accused came to be arrested. When the personal search was taken of the petitioner, the police found a cash amount of Rs. 42,750-. The same came to be seized. The police thereafter executed the panchnama and completed other formalities. During the investigation, it is also revealed that the brothel was situated within 200 meters from the Queen Mary School.

8. It is submitted that, on completion of the investigation, the Police filed charge-sheet against the petitioner and two others of the offences mentioned above under PITA. During the course of trial, the prosecution examined in all 6 witnesses including panch witnesses and Investigating officer. On the other hand, the accused examined themselves as a defence witnesses namely viz. Savitri @ Sumita Narayan Gowda, DW No. 1, Kiran Naidu, DW No. 2. The Magistrate Special Court for PITA, 54th Court convicted the petitioner and came to the conclusion that the prosecution proved that all the accused persons were running brothel in the said premises. They procured and induced victim girls for prostitution and found to be living on the earning of prostitution as well as said brothel is found to be situated within 200 meters from the Queen Mary School. It was also observed that in search of the purse of the accused Savitri, Police found a cash of Rs. 42,750/-. The learned Magistrate disbelieved the defence of the accused and convicted them for the offences punishable under Sections 3, 4, 5, and 7 (1) (b) of the PITA. The petitioner and two others thus convicted and sentenced to suffer rigorous imprisonment for the period of 1 year each and to pay the fine of Rs. 1000/- each. It is submitted that, the Learned Magistrate also ordered to seal the said brothel i.e. Room No. 429 and 9 at Noor Mohammed Beig, Congress House, Near Queen Mary School, Mumbai for the period of 1 year in accordance with the provision of Section 18 (2) of the PITA. It is submitted that taking into consideration the role of the petitioner, her involvement in the commission of the offence under PITA and thereby misusing the said premises claiming as an owner, for such an illegal activity, the order passed by the learned Magistrate is legally and valid and there is no infirmity in the said order.

9. It is also submitted that, the petitioner accused was involved in similar kind of activities in the past, the details of which are as under:-

Case No.

Sections

Results

CR No. 141/2003

Under Section 366(a), 368, 372, 376, 34 of IPC. Under Section 3,4,5,7 PITA.

Acquittal

CR No. 172/2003

Under Section 366(a), 368, 372, 376, 34 of IPC. Under Section 3,4,5,7 PITA.

Conviction

Sp.L.A.C. No. 19/2007

Under Section 3, 4, 5, 6, 7 PITA Act.

Conviction.

Sp.L.A.C. No. 19/2012

Under Section 3, 4, 5, 6, 7 PITA Act.

Acquittal.

The above details shows that, the Petitioner is habitual offender and has been involved in similar kind of activities in the past.

10. It is also submitted that, the action of police sealing the premises which is involved in the commission of offences, is in accordance with the provision of the Act and there is no illegality and infirmity in the same. The police, while sealing the premises followed the procedure under the Act, scrupulously and acted in accordance with the provision of the Act.

11. Heard learned counsel appearing for the petitioner and learned APP appearing for the State at length. With their able assistance, perused pleadings in the petition, grounds taken therein and affidavit in reply filed by Respondent-State and other documents placed on record. Admittedly, the petitioner stands convicted for the offences punishable under Section 3(1), 4(1), 5(1) (a) and 7(1) (b) of the Immoral Traffic (Prevention) Act, 1956 alongwith other two co-accused namely Kiran Chakrapani Naidu and Raju Manoj Gupta. Section 18 of the Immoral Traffic (Prevention) Act, 1956 reads thus:-

18. Closure of brothel and eviction of offenders from the premises.-

(1) A magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of 72 [two hundred metres] of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person or is being used by prostitutes for

carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person incharge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, 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 orders-

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

(b) directing that before letting it out during the period of one year 73 [,or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years,] immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate:

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A court convicting a person of any offence under section 3 or section 7 may pass order under sub-section (1) without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal and the said orders shall cease to have validity after the 74 [expiry of one year or three years, as the case may be]:

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or

landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.

12. Upon perusal of Sub Section 2 of Section 18, it is abundantly clear that, the Court convicting the person of any offence under Section 3 or Section 7 may pass an order in Sub Section 1, without further notice to such person to show cause as required in that sub section. In that view of the matter and since the petitioner is convicted under Sections 3(1), 4(1), 5(1) (a) and 7(1) (b) of the Immoral Traffic (Prevention) Act, 1956, keeping in view the conviction of the Petitioner under aforesaid sections, the concerned Court has invoked provisions of Sub-Section 2 of Section 18 of ITP Act, and passed the order to close Room No. 429 & 9, Noor Mohammed Beig Compound, Congrees House, in front of Queens Mary School, Mumbai, for the period of one year as per Section 18 (2) of ITP Act. The said directions is contained in Clause 9 of the operative part of the order passed by Metropolitan Magistrate Special Court for ITP, 54th Court Mazgaon, Mumbai. Therefore, said order is legally sustainable. Apart from it, by way of filing affidavit it is brought on record by respondent that, said premises is in close vicinity/area of Queens Mary School, Mumbai. In that view of the matter, the view taken by the Trial Court appears to be in consonance with the provision of Section 18(2) of the said Act and also material placed on record. There is no any perversity as such and therefore, no case is made out to cause an interference in the order of Trial Court. Hence, writ petition stands rejected. Rule stands discharged accordingly.