

Anand

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

WRIT PETITION NO. 5658 OF 2018

1. Ravi Kumar Baldev Yadav .Petitioners
2. Kedar Dwarika Mandal

Both Adults and both R/o. 1st floor,
229, Juhu Village, Juhu Bus Depot,
Santacruz (W),
Mumbai – 400 049.

Vs.

The State of Maharashtra .Respondent

Mr. Prabhanjay R. Dave, Advocate, for the Petitioners
Ms Veera Shinde, APP, for the Respondent – State
Mr. Namdeo Parab, PSI, Juhu Police Station, Mumbai present

CORAM : REVATI MOHITE DERE, J.

DATE : 03.12.2019

ORAL JUDGMENT

. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of parties and is taken up for final disposal.

3. By this Petition, the Petitioners have impugned the order dated 05.12.2018 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai below Exh. 3 filed in S. C. No.

445 of 2016, by which the Prosecution's Application (Exh. 3) was allowed and the learned Judge sealed the Petitioners' premises under Section 18(1) of the Immoral Traffic (Prevention) Act (for short 'PITA').

4. The principal submission of the learned counsel for the Petitioners is that the order is unsustainable in law. He submits that the Application preferred by the prosecution seeking closure of the Petitioners' premises i. e. Bungalow No. 229, Juhu Market, Opp. Shankar Market, Juhu Church Road, Juhu, Vile Parle (W), Mumbai itself was misconceived, inasmuch, as the power under Section 18(1) (2) vests with the police i. e. the Commissioner of Police and not with the Court. Learned counsel relied on two orders i. e. Show Cause Notices issued by the Commissioner of Police under Section 18(1) of the PITA which are on page Nos. 47 & 49 of the Application.

5. On the last date, learned APP was asked to produce the Notification and verify whether the power under Section 18(1) vests with the Commissioner of Police or with the Court. Learned APP has produced a xerox copy of the Notification dated 11.08.2006 issued by the Home Department, wherein it is specifically stated that the Commissioner of Police, Brihan Mumbai to be an Executive Magistrate in the metropolitan area of Brihan Mumbai and Additional District

Magistrate in the metropolitan area of Brihan Mumbai and that the powers of a District Magistrate are conferred on the Commissioner of Police, within the metropolitan area of Brihan Mumbai, for the purposes of Sections 18 & 20 of the PITA. In view of the Notification, learned APP submits that the Application filed by the prosecution was not maintainable and as such, the impugned order could not have been passed.

6. Perused the papers. According to the Petitioners, they are the owners of Bungalow No. 229, Juhu Market, Opp. Shankar Market, Juhu Church Road, Juhu, Vile Parle (W), Mumbai, who had given the said premises on Leave And License basis to one Ravi Mandal. It is the prosecution case, that the police on receipt of secret information that prostitution activities were going on in the said premises, a raid was conducted on the said premises and the accused were arrested. Admittedly, the Petitioners are not the accused in the said case which was registered with the Juhu Police Station vide C. R. No. 375 of 2016 alleging offences punishable under Sections 370(3) r/w 34 of the Indian Penal Code and under Sections 3, 4, 5, 7(1)(b) of the PITA. It appears that during the pendency of the trial, the prosecution filed an Application (Exh. 3) praying therein that the said premises be closed, where the raid was conducted. In the said Application, it was further stated that the said premises was within 200 meters of a public place

and hence, should be closed. The Petitioners relied on an Agreement for Sale, by which the said premises was purchased by them. Learned APP disputes the ownership of the premises.

7. Be that as it may, the question that arises in the present Petition is, whether the learned Magistrate had the power to seal the premises in question under Section 18(1) of the PITA. A perusal of the Notification dated 11.08.2006 issued by the Home Department, Mantralaya, Mumbai shows that the Government in exercise of the powers conferred by sub-sections (1) (2) and (5) of section 20 of the Code of Criminal Procedure, 1973 (2 of 1974), and other powers enabling it in that regard and in pursuance of the order dated 04.07.2006 of the Hon'ble Supreme Court in Criminal Appeal No. 702 of 2006, had appointed the Commissioner of Police to be an Executive Magistrate in the metropolitan area of Brihan Mumbai and further appointed him to be Additional District Magistrate in the metropolitan area of Brihan Mumbai and conferred on him the powers of a District Magistrate, within the metropolitan area of Brihan Mumbai, for the purposes of sections 18 and 20 of the PITA. The xerox copy of the said Notification tendered by the learned APP is taken on record. In view of the Notification dated 11.08.2006, it is apparent that it is the Commissioner of Police who can pass an order under Section 18 of the PITA and the learned Sessions Judge was not competent to seal the premises under

Section 18(1) of the PITA. In fact, the Application filed by the prosecution itself was misconceived, having regard to the Notification dated 11.08.2006.

8. Considering the aforesaid, the impugned order dated 05.12.2018 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai below Exh. 3 filed in S. C. No. 445 of 2016 is quashed and set aside.

9. Needless to state, that it is always open for the Commissioner of Police to pass appropriate orders, if the facts so warrant under Section 18(1) of the PITA.

10. Since the impugned order is quashed & set aside, learned APP on instructions states that they will take steps to remove the seals.

11. The Commissioner of Police to re-circulate the Notification dated 11.08.2006 issued by the Home Department, Mantralaya, Mumbai to all the police stations for their information. A copy of the said Judgment be sent to the Commissioner of Police, Mumbai, for compliance.

12. Accordingly, the Petition is disposed of. Rule is made

absolute in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)