

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.386 of 2020

Arising Out of PS. Case No.-235 Year-2019 Thana- SHEOHAR District- Sheohar

Sanjay Prasad @ Sanjay Kumar Gupta, S/o Ram Chandra Prasad, Resident of Ward No.10, Zero Mile Chowk, P.S.-Sheohar, District-Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Governemnt of Bihar, Patna
2. The District Magistrate, Sheohar.
3. The Sub-Divisional Magistrate, Sheohar.
4. The Superintendent of Police, Sheohar.
5. The Officer-In-Charge, Police Station Sheohar, Sheohar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ansul, Advocate

For the Respondent/s : Mr.Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 22-01-2021

This writ application has been preferred invoking the extraordinary writ jurisdiction of this Court to quash the order as contained in memo no.404 dated 31.10.2019 passed by the Sub-Divisional Magistrate, Sheohar (respondent no.3) as contained in Annexure-5 to the writ application. The petitioner has also prayed for quashing of the order dated 28.06.2020 by which the 'Family Hotel and Restaurant' belonging to the petitioner has been sealed by the Executive Magistrate and the officer in-charge of Sheohar police station in compliance of the order passed by respondent no.3.



Brief Facts of the Case

2. It is the case of the petitioner that he was running his hotel business in the name and style 'Family Hotel and Restaurant'. It is a small eight room hotel and is registered under the Bihar Shops and Establishment Act. The hotel is said to be the only source of livelihood of the petitioner.

3. It is stated that on 17.10.2019 the local police conducted a raid in the hotel and arrested one female and a male and also the petitioner on the allegation that prostitution was going on in the hotel. One F.I.R. (Annexure-2) has been lodged. On going through the F.I.R. it would appear that the female allegedly disclosed the informant police officer that at the instance of the petitioner she had agreed to establish physical relationship with the customer of the hotel on payment of Rs. 1000/-. On the said date also she was called on her mobile at 6.00 am by one staff of the hotel and on his call she had gone to room no.4. She allegedly accepted that she had established physical relationship with the customer.

4. It is the further case of the petitioner that on 18.10.2019 the said female/lady was presented before the learned Magistrate who recorded her statement under Section 164 Cr.P.C. The lady is said to have stated that she was an



employee of the hotel and was engaged in cleaning work on payment of Rs. 1200/- per month.

5. The petitioner states that on 21.10.2019 he received a notice from the office of respondent no.3 to show cause as to why his premises be not sealed. A copy of the notice has been enclosed as Annexure-4 to the writ application from which it appears that the said notice has been issued by the respondent no.3 proposing to exercise his power under Section 18 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'the Act of 1956'). Petitioner submitted his reply but respondent no.3 passed the impugned order (Annexure-5) by which the petitioner has been asked to vacate the premises within seven days and directed the Superintendent of Police, Sheohar (respondent no.4) to seal the premises and submit a report.

6. It is the submission of the petitioner that he thought that there was no substance in the matter and for that reason he kept silence, but suddenly on 28.06.2020 the police sealed the premises of the petitioner. A copy of the sealing report dated 28.06.2020 has been enclosed as Annexure-6 to the writ application.

7. Mr. Ansul, learned counsel for the petitioner has



submitted that the Sub-Divisional Magistrate could not have proceeded under Section 18 (1) of the Act of 1956 during pendency of the prosecution under Sections 3, 4, 5 and 7 of the Act of 1956. It is his submission, thus that the impugned actions are violative of right to life and the petitioner is being deprived of his fundamental right to earn his livelihood. According to him, the impugned order is fit to be interfered with on the touchstone of the Article 19(1)(g) and 21 of the Constitution of India.

8. In course of argument, Mr. Ansul has relied upon a judgment of the Hon'ble Apex Court in the case of **Shri A.C. Aggrawal & Ors. Vs. Mst. Ramkali** reported in **AIR 1968 Page 1** (hereinafter referred to as 'Ramkali-2). He has submitted that because the impugned order has been passed by respondent no.3 before conclusion of trial of the main case, the respondent no.3 has committed a jurisdictional error.

9. In opposition Mr. Prabhu Narayan Sharma, learned Assisting Counsel to learned Advocate General has submitted that the respondent no.3 has acted well within his powers and in accordance with law. It is his submission that the respondent no.3 has acted under Section 18 (1)of the Act of 1956, therefore he does not violate the right to life of the



petitioner as the petitioner cannot be allowed to violate a law in the garb of a fundamental right granted to him.

10. It is the submission of Mr. Sharma, learned AC to learned Advocate General that the police had received confidential information that the petitioner is involved in the act of running a brothel and he was committing misdeed in the hotel, therefore under the supervision of higher police officials a raid was conducted and several incriminating articles were recovered from the room which was seized by the police. In course of investigation, it has been found that the lady who was caught there was not an employee of the hotel. It is his submission that in her 164 Cr.P.C. statement the lady has tried to save her skin and such matters are to be considered in course of trial.

11. Referring to Section 18 of the Act of 1956, learned counsel submits that prior to passing of the impugned order a notice was issued to the petitioner who was in jail custody, the said notice was received by his son and it is admitted in paragraph '8' of the writ application that the notice was received calling upon the petitioner to show cause. In paragraph '9' of the writ application it is stated that the petitioner replied to the said notice, therefore the impugned



order has been passed after giving appropriate opportunity to the petitioner to defend himself.

12. Mr. Sharma has relied upon Hon'ble Division Bench judgment of the Delhi High Court rendered in **WP© No.4414/2012 (Nitu and Others Vs. The Govt. of NCT of Delhi and Others) reported in (2016) 226 DLT 457(DB)=2016 SCC Online Del 21**. It is submitted that after 'Ramkali-2' the Act of 1956 has been amended twice and Hon'ble Delhi High Court has considered the effect of amendments in the case of Nitu & Ors. (supra). It is his submission that in the facts of the present case respondent no.3 has rightly exercised his power under Section 18(1) of the Act of 1956 as according to him, in view of the amended Section 18 of the Act of 1956 he is not required to wait for conclusion of trial pending in the court of learned C.J.M., Sheohar and in which a charge-sheet has been filed against the petitioner under Sections 3, 4, 5 and 7 of the Act of 1956.

13. In rejoinder to the submission of Mr. Sharma, learned counsel for the petitioner has submitted that the Hon'ble Division Bench of the Delhi High Court has, in fact reiterated that the amendments brought into the Act after the judgment of the Hon'ble Supreme Court in the case of Ramkali-2 have not altered the legal position as regards the scope and ambit of exercise of power by a Magistrate under Section 18(1) of the



Act of 1956.

Consideration

14. After hearing learned counsel for the parties and upon perusal of the records, this Court finds that the focus of the submissions on behalf of the petitioner is on the scope and ambit of Section 18(1) of the Act of 1956. On facts, it is an admitted position that the trial of the main case is still pending. The question, thus, which has arisen for consideration by this Court is as to whether during pendency of the trial of the main case, respondent no.3 could have passed the impugned order.

15. In order to appreciate the nature of the impugned order, this Court would extract hereunder the text of the complete order passed by the respondent no.3 as under:-

अनुमंडल कार्यालय, शिवहर

गोपनीय प्रशाखा

ज्ञापांक...../सी0

शिवहर, दिनांक:-

प्रेषित,

श्री संजय कुमार गुप्ता

पिता- श्री रामचन्द्र प्रसाद गुप्ता

सा0- जीरोमाईल, शिवहर वार्ड नं0-10

थाना- शिवहर

जिला- शिवहर

विषय- अनैतिक व्यापार (निवारण) अधिनियम-1956 की धारा 18 के अंतर्गत थंडपसल भवजमस - त्मेजनतंदज को कुर्क कर अग्रेत्तर कार्रवाई करने संबंध में।

उपर्युक्त विषयक पु0 नि0- सह- थानाध्यक्ष, शिवहर के प्रतिवेदन ज्ञापांक 2432/19 दिनांक 19.10.2019 द्वारा प्रतिवेदित किया गया है कि शिवहर थाना अंतर्गत जीरोमाईल के निकट Family Hotel & Resturant में अनैतिक देह व्यापार के मामले में शिवहर थाना में कांड संख्या 235/19, दिनांक 19.10.2019 धारा 3,4,5 एवं 7 अनैतिक व्यापार



(निवारण) अधिनियम 1956 दर्ज किया गया है, जिसके आलोक में Family Hotel & Resturant को उनके द्वारा seize करने का अनुरोध किया गया । अतएव अनैतिक व्यापार (निवारण) अधिनियम 1956 की धारा 18 के उल्लंघन के आरोप में श्री संजय कुमार गुप्ता (Pro-Family Hotel & Resturant) पिता श्री रामचन्द्र प्रसाद गुप्ता सा० जिरोमाईल शिवहर वार्ड नं० 10 थाना . शिवहर जिला शिवहर को कारण पृच्छा/नोटिस जारी किया गया जो उनके लड़के श्री अभिषेक प्रसाद गुप्ता द्वारा दिनांक 21.10.2019 को तामिला किया गया । तत्पश्चात श्री संजय कुमार गुप्ता (Pro-Family Hotel & Resturant) पिता श्री रामचन्द्र प्रसाद गुप्ता सा० जिरोमाईल शिवहर वार्ड नं० 10 थाना शिवहर जिला शिवहर द्वारा श्री संजय कुमार सिंह अधिवक्ता के माध्यम से अधोहस्तारक्षरी को अपना जवाब समर्पित किया गया है एवं उल्लेख किया गया कि सूचना आवेदक संजय कुमार गुप्ता को व्यक्तिगत रूप से हस्तगत नहीं करायी गई है। इसलिए होटल सीज करने की प्रक्रिया दूषित है जो मान्य नहीं है, अतएव उनके पुत्र को नोटिस तामिल करायी जाना यह संजय के जवाब संख्या 08 को खंडित करता है । इस संबंध में उनके द्वारा यह कहना कि पु० नि० 0 सह थानाध्यक्ष, शिवहर के द्वारा अनैतिक व्यापार (निवारण) अधिनियम 1956 की धारा 3,4,5 और 7 के उल्लंघन के आरोप में दर्ज शिवहर थाना कांड संख्या 235/19 दिनांक 17.10.2019 गलत है एवं किसी और के प्रभाव में किया गया है, जो विधितः पोषनीय नहीं है । इस संबंध में उनका जवाब मान्य नहीं है एवं यह संजय के जवाब संख्या खंड - .01,02,03,04 एवं 06 को खंडित करते हैं ।

ज्ञातव्य हो कि अनैतिक व्यापार, (निवारण) अधिनियम 1956 के धारा (18) (1) के तहत अनुमंडल दंडाधिकारी को यह शक्ति प्रदत्त है कि पुलिस प्रतिवेदन के आधार पर किसी भी परिसर में जहाँ पर अनैतिक देह व्यापार चल रहा है उक्त परिसर के मालिक को कारण . पृच्छा पूछे कि क्यों नहीं परिसर को seize कर दिया जाय जो श्री संजय कुमार गुप्ता (Pro-Family Hotel & Resturant) पिता श्री रामचन्द्र प्रसाद गुप्ता सा० जिरोमाईल शिवहर वार्ड नं० 10 थाना शिवहर जिला शिवहर द्वारा लिखित जवाब संख्या 07 का खंडन करता है । पु० नि० 0 सह थानाध्यक्ष शिवहर के प्रतिवेदन ज्ञापांक 2432/19 दिनांक 19.10.2019 द्वारा प्राप्त थाना कांड संख्या 235/19 दिनांक 17.10.2019 में पर्याप्त मात्रा में साक्ष्य मौजूद है, जिससे यह स्पष्ट होता है कि उक्त परिसर में अनैतिक देह व्यापार का कारोबार चल रहा था ।

अतः वर्णित परिपेक्ष्य में अनैतिक व्यापार (निवारण) अधिनियम 1956 की धारा (18) (1) और धारा (1) (इ) के तहत आपको आदेश दिया जाता है कि उक्त परिसर यथा Family Hotel & Resturant को इस कार्यालय के द्वारा निर्गत आदेश के 7 दिनों के अंदर खाली कर दें । 7 दिन के उपरांत पु० नि० 0 सह.



थानाध्यक्ष, शिवहर को आदेश दिया जाता है कि उक्त परिसर को खाली कराकर seize करते हुए सम्पूर्ण परिसर की फोटोग्राफी सहित प्रतिवेदन अधोहस्ताक्षरी को समर्पित करें।

हस्ताक्षर अस्पष्ट
अनुमंडल दंडाधिकारी
शिवहर

ज्ञापांक-404/सी0

शिवहर, दिनांक 31.10.2019

प्रतिलिपि - पु० नि० दृसह वृ थानाध्यक्ष, शिवहर को सूचनार्थ एवं अनुपानार्थ पेषित।

प्रतिलिपि-अनुमंडल पुलिस पदाधिकारी, शिवहर को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

प्रतिलिपि-पुलिस अधीक्षक, शिवहर को सादर सूचनार्थ समर्पित।

प्रतिलिपि- जिला दंडाधिकारी, शिवहर को सादर सूचनार्थ समर्पित

हस्ताक्षर अस्पष्ट

31.10.2019

अनुमंडल दंडाधिकारी शिवहर

16. It is evident from perusal of the impugned order that the respondent no.3 has proceeded to exercise his power conferred under Section 18(1) of the Act of 1956 and directed the petitioner to vacate the premises within a period of 7 days. Since the petitioner failed to comply with the order impugned, the consequential action of sealing of the premises has been taken.

17. In order to fully appreciate the relevant provision of Section 18 of the Act of 1956 it would be required to be gone into. One thing is apparent on the face of this provision that it is providing for a kind of preventive measure, intending to discourage the chance of a brothel being run near a public place. Section 18 and its various sub-sections as existing



prior to its amendment were as under:-

“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 two hundred yards 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 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 orders 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 expiry of one year: 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. ”

18. The aforesaid provision came for consideration in the case of Mst. Ramkali (supra). The Hon'ble Supreme Court was considering the submissions one of which was that Section 18 discriminates against the person who is proceeded against under that section, without first being prosecuted under s.3 or s.7 even though the information laid against him discloses an offence either under s.3 or s.7. It was contended that Section 18 covers two classes of cases, namely, persons who have been prosecuted and found guilty of an offence either under s.3 or s.7 as well, as persons not dealt with under those provisions. It was contended that in the case of the former, they have the benefit of regular trial, they can cross-



examine the prosecution witnesses, adduce defence evidence and also go up in appeal if convicted. In those cases the result of the proceedings under s.18 largely though not entirely depends on the result of the connected prosecution. But in the case of the latter, i.e., those who are only proceeded against under s.18 they have only a right of 'hearing'. It is further urged on their behalf that under s.3 or s.7 action is taken before a court, whereas the proceeding under Section 18 is taken before a magistrate.

19. The Hon'ble Apex Court considered the submissions and observed inter alia as under:-

“ Sections 3 and 7 provide for the punishment of persons guilty of the offences mentioned therein. Any contravention of the provisions mentioned therein amounts to a cognizable offence in view of Section 14, whereas a proceeding under s.18 is in no sense a prosecution. It is a preventive measure. It is intended to minimise the chance of a brothel being run or prostitution being carried on in premises near about public places. Naturally, in the cases of prosecutions, a regular trial with a right of appeal is provided for. The enquiry contemplated by s.18 is summary in character.

The attachment contemplated by that section can enure only for a period of one year. Under these circumstances evidently the Legislature thought that a regular trial



and an appeal against the order of the magistrate is not called for. In these cases it is unnecessary for us to spell out the scope of the expression "hearing" found in s.18. It is necessary to remember that ss.3 and 7 deal with persons guilty of offences whereas s.18 deals with the premises mentioned therein. It is not correct to say that the set of facts to be proved in prosecutions under ss.3 or 7 and in proceedings under s.18 are identical. In the former the prosecution to succeed has to establish either the intention or knowledge referred to therein but in the latter they are not necessary ingredients. Section 18 provides for two classes of cases namely, (1) those coming either under s. 3 or 7 as well as under s.18 and (2) those coming only under s. 18. They are two distinct classes of cases-a classification which has reasonable relationship with the object sought to be achieved and therefore falls outside the rule laid down by this Court in Anwar Ali Sarkar's(1) case reported in [1962] S.C.R. 284.”

20. The Hon’ble Apex Court, in the said case held a view that the facts were disclosing offences under Section 3 against the respondents, therefore, their Lordship held interalia as follows:-

“.....Bearing in mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various



provisions in the Act, we are of the opinion that in cases like those before us the magistrate who is also a court as provided in s.22 must at the first instance proceed against the persons complained against under the penal provisions in ss.3 or 7 as the case may be, and only after the disposal of those cases take action under s.18 if there is occasion for it....”

21. After the judgment of the Hon’ble Apex Court in Ramkali-2 the Act of 1956 has been amended twice. The first amendment took place vide Act 46 of 1978 and then second amendment was brought by Act 44 of 1986. The amendments have substituted/inserted/omitted the various provisions of the Act of 1956. The nomenclature of the Act was also changed w.e.f. from 26.01.1987 and some of the important provisions were affected by Act 46 of 1978. It included substitution of the definition of ‘Magistrate’ under Section 2 (c) and insertion of a Schedule to the Act specifying the Magistrates who are competent to exercise the power under different provisions of the Act of 1956. Section 22 of the Act which provides for trial of any offence under Section 3, Section 7 and etc. has also been suitably amended. The amended Section 2(c), the Schedule inserted to the Act and Section 22 read as under:

“—Section 2(c) —magistrate means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the



expression occurs and which is specified in the first column of the Schedule.”

The Schedule

Section Magistrate competent to exercise the powers

xxx xxx xxx

18. District Magistrate or Sub-Divisional Magistrate.

xxx xxx xxx

“**Section 22. Trials** – No Court, inferior to that of a **Metropolitan Magistrate or a judicial Magistrate of the first class** shall try any offence under Section 3, Section 4, Section 5, Section 7 or Section 8.” (emphasis supplied)

22. The effect of the amendments were subject matter of consideration in the case of Nitu and Others (supra) before the Hon’ble Delhi High Court. A threadbare discussions on the amendments may be found in the said judgment. This Court, having gone through the same would quote paragraph ‘16’ and ‘17’ from the said judgment hereunder:-

“16. By virtue of Section 22 as amended by Act 46 of 1978, it is clear that the offences under Sections 3 and 7 cannot be tried by any Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class.

17. Further, the power under Section 18 to direct closure of brothel and eviction of offenders from the premises is exercisable by a Magistrate, i.e., District Magistrate or Sub-Divisional Magistrate and also a Court convicting a person of any offence under Section 3 or Section 7. While sub-section (1) of Section 18 confers power on the District Magistrate or Sub-Divisional Magistrate, sub-



Section (2) confers power on the Court which convicted a person of any offence under Section 3 or Section 7.”

23. Dealing with the submissions advanced before the Hon’ble Court, the Delhi High Court observed and held in paragraphs 28, 29, 30, 31, 32 and 35 as under:-

“28. We may at the outset point out that Sections 3 and 7 of the Act provide for the punishment of persons guilty of the offences mentioned therein and thus they are punitive in nature. The said offences can be tried by no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class in view of Section 22. However, a proceeding under Section 18 is a preventive measure and it is intended to minimise the chance of a brothel being run or prostitution being carried on in a premises within a distance of 200 mtrs. of any public place. The inquiry contemplated by Section 18(1) is summary in nature and the power to pass such an order has been conferred on the District Magistrate or Sub- Divisional Magistrate. Before passing such an order, it is mandatory to issue a notice on the person in occupation or any other person in charge of the premises to show cause and also to give an opportunity of being heard and thereupon if the District Magistrate or Sub-Divisional Magistrate is satisfied that the premises is being used as a brothel or for carrying on prostitution then the order of eviction or not to let out the same for a period of one year without the previous approval of the Magistrate may be ordered. Under the proviso to Section 18(1), in an appropriate case, the Magistrate may also restore the possession of the premises with directions as specified therein.

29. Similar order may also be passed under sub-Section (2) of Section 18 by a Court which convicted a person of any offence under Section 3 or Section 7, as a consequence to the conviction.



As could be seen, by virtue of the amendment by Act 46 of 1978, sub-Section (1) and sub-Section (2) of Section 18 are made independent of each other. Though the power exercisable under sub-sections (1) and (2) is one and the same, the authorities empowered to exercise the said power are different and the circumstances under which the same can be exercised and the procedure to be followed are entirely different. It may be recalled that before amendment by Act 46 of 1978, the powers under both sub-Sections (1) and (2) of Section 18 were exercisable by a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate or a Magistrate of first class specially empowered by the State Government by notification in the official gazette to exercise jurisdiction under the Act who are also competent to try the offences under Sections 3 and 7. The Division Bench of the High Court of Punjab & Haryana in Ram Kali-1 therefore opined that whenever action is taken under Section 18 independently of Section 7, it would offend Article 14 of the Constitution. Reiterating the same, the Supreme Court in Ram Kali-2 made it clear that the Magistrate who is also a Court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in Sections 3 or 7 as the case may be and only after the disposal of those cases take action under Section 18, if there is occasion for it.

30. However, now there is a change in the legislation and there is no more overlapping of the powers conferred under sub-Sections (1) and (2) of Section 18. The District Magistrate or Sub-Divisional Magistrate who is conferred with the power to direct eviction under sub-Section 18(1) is not competent to try an offence under Section 3 or 7. Though the Metropolitan Magistrate or a Judicial Magistrate of the first class apart from trying an offence under Section 3 or 7 is also empowered to direct eviction under Section 18(2), the same can be done only if the criminal proceedings resulted in conviction.

31. Therefore, it appears



to us that Section 18(1) as it stands as of today is in conformity with the law laid down in Ram Kali-1 and Ram Kali-2 and the contention that the amendments by Act 46 of 1978 have rendered Ram Kali-2 ineffective is untenable. At any rate, as held in State of Tamil Nadu Vs. State of Kerala; (2014) 6 Scale 380, though the legislature cannot declare any decision of a court of law to be void or of no effect, it can pass an amending Act to remedy the defects pointed out by a court of law. In our considered opinion, the Amendment Act 46 of 1978 has been made only to remedy the defects pointed out in Ram Kali-1 and Ram Kali-2 and the same cannot be held to be impermissible under law.

32. The further contention of the learned Senior Counsel for the petitioners that under the amended provisions absolute discretion is vested on the police administration either to initiate prosecution under Section 3 or Section 7 and then to invoke Section 18(1) or to straightaway invoke the proceedings under Section 18(1) of the Act and the same results in arbitrariness and abuse of power by the Police is equally untenable. Though in a different context, this issue was considered and answered in Ram Kali-2 as under:

“12. The attachment contemplated by that section can enure only for a period of one year. Under these circumstances evidently the legislature thought that a regular trial and an appeal against the order of the Magistrate is not called for. In these cases it is unnecessary for us to spell out the scope of the expression "hearing" found in Section 18. It is necessary to remember that Sections 3 and 7 deal with persons guilty of offences whereas Section 18 deals with the premises mentioned therein. It is not correct to say that the set of facts to be proved in prosecutions under Sections 3 or 7 and in proceedings under S.18 are identical. In the former the prosecution to succeed has to establish either the intention or knowledge referred to therein but in the latter they are not necessary ingredients. Section 18 provides for two classes of cases namely, (1) those coming either



under Section 3 or 7 as well as under Section 18 and (2) those coming only under S. 18. They are two distinct classes of cases-a classification which has reasonable relationship with the object sought to be achieved and therefore falls outside the rule laid down by this Court in Anwar Ali Sarkar case.¶”

35. It is also brought to our notice by the learned ASG that the Division Bench of the Bombay High Court in Sunny Kamal singh Mathur vs. Office of Commissioner of Police and Ors.; 2009 CrL.LJ 1465, having interpreted the effect of the amendments to the Act post Ram Kali-1 and 2 expressed a similar view observing:

“...14. It emerges from the discussion hereinabove that, the trial under Section 22 has to be conducted by a Magistrate or a Judicial Magistrate, whereas under Section 18(1), the power has to be exercised by a District Magistrate or a Sub-Divisional Magistrate in terms of the Schedule of the Act. Therefore, the legislature has taken note of the fact that whereas power under Section 18(1) is a preventive power, power under other section like Sections 3, 4, 5, 6, 7 or 8 is of penal nature, which should be given to the Judicial Magistrates. But if a Magistrate does not take action under Section 18(1), the Judicial Magistrate empowered to conduct trial under the amended provisions of Section 22 may still take action under Section 18(2) after a person is convicted by such a Judicial Magistrate under Section 3 or 7. Since Section 22 has undergone amendment, we do not feel that the judgment of the Hon'ble Supreme Court will apply to the controversy.¶ .

24. Having considered the materials on the record wherein this Court finds that the cognizance of the offences under Section 3, 5, 7 and other provisions of the Act of



1956 has already been taken against the petitioner, the respondent no.3 was not required to wait for final conclusion of the trial before exercising his power under Section 18(1) of the Act of 1956. This Court agrees with the views expressed by the Hon'ble Delhi High Court in the case of Nitu and Others (supra) and the same finds support from the judgment of Hon'ble Bombay High Court in the case of Sunny Kamal Singh Mathur (supra). The power conferred upon a Magistrate under Section 18(1) of the Act of 1956 is not dependent upon the outcome of the trial of the main case. Thus, the contention of learned counsel for the petitioner that the respondent no.3 should have waited for the final outcome of the main case which is pending for trial, is not fit to be accepted.

25. Since, the respondent no.3 has acted well within the powers conferred upon him under Section 18(1) (a) of the Act of 1956, the impugned orders are not required to be interfered with on the ground of lack of authority/power upon the respondent no.3.

26. It is not the case of the petitioner that the impugned order (Annexure-5) has been passed in violation of the principles of natural justice. The petitioner has admitted that



his son was served with the notice and had replied to the same.

27. This Court further finds that the respondent no.3 proceeded to pass the impugned order after receipt of a report as contained in memo no.2432/19 dated 19.10.2019 from the officer in-charge, Sheohar police station. The proceeding initiated under Section 18 is in the nature of a summary proceeding. In the opinion of this Court principles of natural justice has been complied with before passing of the impugned order. No illegality or infirmity may be found with the same on this score.

28. The basic principles as regards the issuance of a writ of certiorari enunciated by Article L.A. Rex v. Electricity Commissioners (1924) 1 K.B. 171) which has been reiterated by Hon'ble Apex Court in the case of **Hari Vishnu Kamath VS. Ahmad Ishaque** reported in **AIR 1955 SC 233** remains the same and following propositions are said to be settled and established: “(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity



to the parties to be heard, or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction.

29. In the extraordinary writ jurisdiction while considering the impugned order for purpose of issuance of a writ of certiorari, this Court would not act as a court of appeal. No perversity is found in the impugned order, hence, this Court is not persuaded to issue a writ of certiorari to quash and cancel the impugned orders.

30. The writ application is devoid of merit and it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	
CAV DATE	22.12.2020
Uploading Date	22.01.2021
Transmission Date	22.01.2021

