JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO.124 OF 2022

Mst. Saima Bagh.
Vs.
Assistant Commissioner (Saddar), ICT, Islamabad and others.

Petitioner by : **Mr. Raheel Khan Niazi, Advocate.**

Respondents by : **Mr. Danial Hassan, State Counsel.**
Mr. Talat Mehmood, S.I.

Date of hearing : **31.01.2022.**

SAMAN RAFAT IMTIAZ, J. The instant writ petition has been filed by the Petitioner assailing the sealing of her Ladies Beauty Salon and Ladies Spa located at Shop No. 3 & 4, Ground Floor, Taha Arcade, Plot No.25, Sector E-11/3, MPCHS, Islamabad under the name & style of *"Rose Saloon"*.

2. Brief facts, as per the F.I.R., are that upon complaint filed by the public with Police Station Golra Sharif, Islamabad and on directions, the Respondent No. 1, along with ASI, and other officials, checked various massage centers situated in Sector E-11/3, Islamabad. During such checking, various women named in the F.I.R. were allegedly found in semi-nude condition in *"Rose Executive Massage Center"* whereas 3/4 men also in semi-nude condition as well as the Manager fled the scene. However, four (04) women named in the F.I.R., were arrested allegedly for the offences under Sections 294 and 109, PPC whereas the massage center was sealed on the spot. Hence, the present petition.

3. According to the Memo of Petition, the sealed salon is owned by the Petitioner and is registered with the SECP as a private limited company with the name "Executive SPA & Saloon". Said saloon provides beauty services such as hair cutting, ladies make-up, bridal and party make-up, manicure, pedicure, etc., ladies SPA and Reflexology services only. The Petitioner has obtained the aforementioned premises on rental basis from owner of the property.

4. While denying the allegations contained in the F.I.R., learned counsel for the Petitioner submitted that no show cause notice was issued to the Petitioner prior to the raid and sealing of her salon which is in violation of natural justice. Learned counsel for the Petitioner argued that the contents of the F.I.R. do not spell out an offence within the purview of Section 294, PPC and as such Section 109, PPC. He contended that the Petitioner's salon does not constitute "public place" and even otherwise no obscene activity was underway. He submitted that the men, who were allegedly found in semi-nude condition as per the F.I.R., are fictitious. He contended that it was inconceivable that they would have managed to escape in the presence of the raiding party. Moreover, it has been two (02) months since the incident but still no such persons have been revealed in the investigation. Insofar as sub-section (b) of Section 294, PPC is concerned the alleged offence is not made out from the contents of the F.I.R.

5. Learned counsel further submitted that the only provision of law which provides the Magistrate to seal a property is under Section 145, Cr.P.C., which can only be invoked in case of any dispute concerning land which is likely to cause breach of peace. However, there is no dispute concerning the land on which the salon is located, therefore, there is no question of breach of peace on account of any such dispute. Moreover, it was submitted that the impugned raid was in violation of Section 103, Cr.P.C. as it lacked two witnesses from the public.

6. For all the forgoing reasons, the learned counsel for the Petitioner argued that the raid as well as the act of sealing the salon of the Petitioner is unjustified, unlawful, illegal and is in violation of the Article 4, 5, 18, 24, & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He also submitted that despite the passing of two (02) months, Challan has not been submitted. In such circumstances, the learned counsel for the Petitioner has prayed for setting aside the seal attached to the property by de-sealing the same.

7. On the other hand, as per the para-wise comments submitted on behalf of Respondents No. 1 and 4, the Petitioner is running a massage center under the guise of salon / beauty parlor. On the front side there is a

saloon and at back side about five separate cabins have been established for massage purposes which are completely covered from ground to roof with locked doors. Further that these cabins are being used for illegal and immoral activities. During the raid, which was conducted on public complaints and as per direction of Deputy Commissioner, Islamabad dated 26.11.2021, it was revealed that all the saloons were functioning as massage centers. In fact the saloons are running brothel houses. Since these saloons were found involved in illegal activities they were sealed and no written and speaking order was required as sealing was under the supervision of Sub-Divisional Magistrate present on the spot. It has been specifically denied that sealing was under Section 145, Cr.P.C. According to the said comments the male persons present inside the salon fled due to leakage of information regarding raid in at nearby massage centers, however, the women arrested from the salon were not in proper clothing. Although the petitioner was not present at the spot, however, the arrested women disclosed that activities were being run at the behest of the owner therefore, her name has also been included in the FIR.

8. The learned State Counsel submitted that there is no requirement under the law restricting Magistrate from sealing a place on account of illegal activities; that a therapeutic center requires registration whereas the salon in question is not registered with the relevant authority; that the female workers arrested from the salon have failed to produce any training or diploma certificate; that a prostitution ring is at work though no such charges will be pressed in order to protect the future of the young women arrested; that Challan has been prepared and will be submitted on the next date of hearing i.e. 03.02.2022; that the Magistrate is fully empowered under Section 144, Cr.P.C.; no requirement of Section 103 as the raid was carried out by the Magistrate; and that massage center is located in a market place which is a public place whereas private place is only a home or a dwelling.

9. Arguments have been heard and record perused.

10. The Court, in exercise of its jurisdiction under Article 199 (b) (i) of the Constitution, does not conduct detailed inquiries or go into factual controversies. Such proceedings are aimed at providing immediate and

efficacious relief to the aggrieved party. Therefore, deeper appreciation of evidence, which may prejudice the Trial Court is not permissible. As such, the question whether or not any offence under Sections 294 or 109, PPC was underway at the Petitioner's salon is for the Trial Court to determine. Before passing an order for de-sealing the property under Article 199(b)(i) of the Constitution, this Court must form a *prima facie* view as to whether or not the act of sealing was legal.

11. Section 145, Cr.P.C., provides the procedure where dispute concerning land etc., is likely to cause breach of peace. There is nothing on the record to suggest that the property or the salon situated thereupon is the subject of any dispute which was likely to cause any breach of peace. Even otherwise, the first step to be taken under Section 145, Cr.P.C., is for the Magistrate to make an order, in writing, stating the grounds on which he is satisfied that a dispute likely to cause breach of peace exists concerning any land or the boundaries thereof and requiring the parties to attend his Court. No such order has been passed in the instant case. Indeed, the Respondents No. 1 and 4 have categorically denied in their para-wise comments that the premises were sealed under Section 145, Cr.P.C.

12. Insofar as Section 144, Cr.P.C., is concerned, the exercise of powers thereunder also requires an order to be made and moreover such orders cannot remain in force for more than two days unless the situation falls within one of the exceptions given in sub-section (6) thereof in which case a notification in the official Gazette is required. Therefore, the act of sealing without an order is not justified under Section 144, Cr.P.C., also.

13. This brings us to the submission that no written or speaking order was required as sealing was conducted under the supervision of Sub-Divisional Magistrate due to illegal activities afoot. While the sub-Divisional Magistrate may indeed have the power to take cognizance of the offence under Section 294, PPC pursuant to Section 190, Cr.P.C., however, sealing the premises in this manner and that too, indefinitely not only amounts to condemning the Petitioner unheard but also presumes her guilt and is tantamount to awarding punishment even before trial has begun. Furthermore, the act has disrupted the business of the Petitioner and also the livelihood of all those employed at the salon.

14. In view of what has been discussed above, the instant petition is **allowed** and the sealing of the property is declared void, without lawful authority and jurisdiction. It is, therefore, directed that the seal shall immediately be removed and the possession of the property be restored to the Petitioner forthwith.

15. Needless to say that all the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the learned trial Court.

(SAMAN RAFAT IMTIAZ)
JUDGE