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**SUPREME COURT**
**P.M. Senerath****Vs.****V. Mahadevan**

*S.C. Appeal No. 16/81 – CA(LA) 2/81(SC) – CA Appeal 433/79 – M.C. Maligahakande No 54532 with CA Application No. 2178/80*

*S.4 Brothels Ordinance – Section 22(1) Rent Act - Availability of rights under either Section to evict tenant for use of premises for immoral purposes – election*

A was convicted in the Magistrate's Court for running a brothel and fined Rs. 200/- under the Brothels Ordinance. The landlord of the premises where the brothel was run filed a petition in the Magistrates' Court praying for an order of ejection of the tenant in terms of Section 4 of the Brothel's Ordinance. The Magistrate ordered eviction. On appeal the Court of Appeal affirmed the Magistrate's Order.

Appellant appealed to the Supreme Court on the grounds that Section 22(1) of the Rent Act prohibited the bringing of an action for ejection under any other law.

*Held* that Section 22(1)d of the Rent Act preserves the common law right of ejection for use of premises for immoral purposes and consequently it was open to the landlord either to resort to a civil action under Section 22(1)d of the Rent Act or invoke the powers of the Magistrate under Section 4 of the Brothels Ordinance.

**APPEAL** from judgment of the Court of Appeal.

**Before:** Samarakoon, Q.C., C.J.,  
Wanasundera, J., and  
Ratwatte, J.

**Counsel:** A. A de Silva with S. A. Dassanayake  
and P. Samararatne for Appellant.  
K. N. Choksy, S. A., with J. Joseph and  
Miss R. Rajapakse instructed by  
A. Srinivasan for Respondent.

**Argued on:** 18th May, 1982.

*Cur. adv. vult.*

**Decided on:** 25.5.82

**SAMARAKOON, C.J.**

The Appellant was convicted in case No. 36251 of the Magistrate's Court of Maligakanda on a charge of running a brothel at premises

No. 108/1, Rosmead Place, Colombo 7, and fined Rs. 200/-. On the date of offence the Appellant was the contractual tenant of the premises under the Respondent, who was the owner of the premises. On the 16th December, 1976, the Respondent filed petition in the Magistrate's Court of Maligakanda praying for an order of ejection of the Appellant from the said premises in terms of section 4 of the Brothels Ordinance (Chapter 31). The Respondent pleaded inter alia the conviction of the Appellant in the said case No. 36251 for an offence under the Brothels Ordinance. After inquiry the Magistrate ordered the eviction of the Appellant from the said premises. The Appellant then unsuccessfully appealed to the Court of Appeal. He has now appealed to this Court with the leave of the Court of Appeal.

Before I deal with the main contention of Counsel for the Appellant I should like to dispose of two other arguments of Counsel. He contends that this being an application made under section 4 of Chapter 31, the Respondent was obliged in law to make an application to the Magistrate in the same case upon the conviction being entered. He seemed to suggest that this must be done at the time the conviction is entered of record because of the use of words "upon conviction" in section 4. Section 4 reads thus:

"4(1) Upon the conviction of the tenant, lessee, or occupier of any premises of any offence under this Ordinance, it shall be lawful for the court, on the application either of the prosecuting party, or of the owner, or lessor, or, if it so thinks fit, of its own motion, to declare that the tenancy or occupation of the said premises under the lease or agreement under which the same are held or occupied shall be terminated from such date and subject to such conditions as may be defined in the order of the court, and may by the same or a further order direct that the possession of the said premises shall be delivered to any person entitled to the possession thereof as from any date specified in the order.

(2) In the event of any owner or lessor of any premises failing to exercise his right of application to the court under this section, and of the tenant, lessee, or occupier so convicted being subsequently convicted of an offence under this Ordinance in respect of the same premises, such landlord or lessor shall be deemed to have knowingly abetted the said offences, and

shall be liable to be prosecuted and punished accordingly, unless he proves that he had taken all reasonable steps to prevent the recurrence of the offence."

I am unable to accede to this argument. The words "upon conviction" in the context only means "Following a conviction". Thereafter the remedy provided by this section becomes available. Furthermore it must be noted that the parties to the prosecution were the Officer-in-Charge of the Vice Squad, Cinnamon Gardens Police Station and the Appellant. The Respondent was not a party to proceedings and therefore could not have made any application at the time of conviction. He may not have been aware of the conviction at the time it was entered. Section 4(1) is an empowering section giving the Magistrate power to order eviction of an accused convicted of an offence under this Ordinance. The Magistrate could act *ex mero motu* or on the application of the prosecution or later on the application of the landlord. It does not require that the application should be filed in the record of the case in which the conviction was recorded. It can very well be a separate application though I find that the application tendered by the Respondent to the Magistrate's Court purported to be and was intended to be filed and heard in the very same case. The Court appears to have given it a separate number and heard it as a separate case which it was entitled to do. Counsel for Appellant also complained that the application was made by the Respondent after the lapse of over 11 months. The Ordinance does not impose a time limit and this contention also fails.

The main contention of the Appellant was that in view of the provisions of section 22 of the Rent Act No. 7 of 1971 an order of eviction under the provisions of section 4(1) of the Brothels Ordinance was bad in law and illegal. He drew our attention to the fact that the Rent Act was the later Act. The relevant parts of section 22(1) and (d) read as follows:-

22 (1) Notwithstanding anything in any other law, no action or proceedings for the ejection of the tenant of any premises the standard rent (determined under section 4) of which for a month does not exceed one hundred rupees shall be instituted in or entertained by any court, unless where -

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(d) the tenant or any person residing or lodging with him or being his subtenant has, in the opinion of the court, been guilty of conduct which is a nuisance to adjoining occupiers or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person."

Section 22(1) is a general provision which has the effect of wiping out all common law and statutory rights of action which were then available to a landlord for the ejection of his tenant. Four exceptions to the general rule are set out in sub-sections 1(a), 1(b), 1(c) and 1(d) of that section which preserve the landlord's common law right of action in ejection. In particular sub-section 1(d) preserves the common law right of a landlord to maintain an action in ejection when the tenant has been convicted of using the premises for an immoral purpose. In other words the prohibition contained in the provisions of section 22(1) is not applicable in a case of immoral usage of premises. In the result not only common law rights but any statutory provision providing for the ejection of such a tenant will not be covered by the provisions of section 22(1) of the Rent Act. The provisions of section 4(1) of the Brothels Ordinance and the power given by it to eject upon conviction was one that has stood since 1919 along with the common law right of action. These provisions of section 4 are not affected or nullified by the words "notwithstanding anything in any other law" in section 22(1) of the Rent Act. In the result it was open to the Respondent either to resort to a civil action under the Common Law taking advantage of the provisions of section 22(1)(d) of the Rent Act or else to invoke the powers of the Magistrate under the provisions of section 4 of the Brothels Ordinance. He has chosen the latter which in the circumstances is certainly the speedier and wiser course.

I therefore dismiss the appeal with costs.

WANASUNDERA, J. — I agree.

RATWATTE, J. — I agree.

*Appeal dismissed.*