

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 6th December, 2010
Date of Order: 17th January, 2011

+ Crl. Appeal No. 121/2004

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17.01 2011

Naseem Bano @ Naseem

... Appellant

Through: Mr. K.K.Datta, Advocate

Versus

The State of NCT of Delhi

... Respondent

Through: Mr. Sunil Sharma, APP for the State

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This appeal has been preferred by the appellant convicted by the trial Court under Section 3, 4 & 5 of Immoral Traffic Prevention Act (ITPA) in FIR No. 45/2002 PS Kamla Market. This was third conviction of the appellant under ITP offence. The other two convictions were in case FIR No. 375/2001 and FIR No. 456/2001. She was sentenced to undergo four years RI and fine under Section 3 of ITP. RI for two years and fine under Section 4 and RI for 5 years and fine under Section 5 of ITP Act. All sentences were to run concurrently. The Court also ordered closure of the portion of *kotha no. 57* occupied by convict within 07 days under Section 18(1) of ITP Act.

2. In order to come to conclusion that it was the appellant who was running *kotha no. 57* second floor, GB Road Delhi, trial Court mainly relied upon documentary evidence which included electricity connection obtained by the appellant in her name at *kotha no. 57*, inspection report for providing electricity

connection and the record of telephone department since the appellant was having a telephone in her name at the same premises. Coupled with this evidence there was evidence of PW-1 Chandni who testified about raid conducted by the police at *kotha no. 57* and recovery of four girls admittedly indulging in prostitution from there. Section 3 of ITP Act was made out against accused in view of the fact that the accused was keeping and managing *kotha no. 57* as a brothel. Since it was the third conviction of the appellant for offence under Section 3 of ITP Act in respect of some *kotha* the minimum punishment for second conviction or subsequent conviction provided under law was two years and maximum five years. Thus, there is no illegality in the order of trial Court convicting the appellant under Section 3 of ITP Act and awarding punishment as awarded.

3. Section 4 of the ITP Act provides that if a person over the age of 18 knowingly lives wholly or in part on the earnings of prostitution of any other person it is an offence. PW-1 in this case categorically testified that whatever payment was made by the customers for her prostitution, it was shared by appellant Naseem and other accused Suman (PO) and whatever *baksheesh* was given by the customers that also used to be taken by Suman. Whenever, she (PW-1) asked to send her back to her house she was told that she would be sold at some other *kotha*. She further deposed that many girls who insisted for going back to their houses were sold at different *kothas*. PW-2 Heena was also recovered from same *kotha*. She stated that she did not know the owner of *kotha*, but one Praveen had forced her to indulge in prostitution and all her earnings were also used to be taken away. She has not denied that she was recovered from *kotha No. 57*, second floor. However, she stated that she was brought to this *kotha* by one Praveen from Bangalore to Delhi on the pretext of

getting some good job in Delhi. It is obvious that her earnings were also being used by owner of *kotha*. PW-3 Suman d/o Nagnath stated that she was brought to Delhi on the pretext of getting a good job but she landed at *kotha no. 57* because of a lady called Kavita. She was told to indulge into prostitution and she agreed. She was indulging in prostitution in *kotha* of her own free will. Similar statement is of PW-4 Rekha.

4. As already discussed, the ownership of *kotha* by appellant was proved by documentary evidence. Section 4 Sub Section 2 provides that if a person above 18 years of age is proved to be living with, or to be habitually in the company of, a prostitute it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person. From the testimonies of PW-1, 2, 3 & 4 it stands proved beyond reasonable doubt that the appellant was habitually living in company of prostitutes. She was owner of this *kotha* while PW-1 to 4 were the prostitutes thus, it is to be presumed that she was living on the earnings of prostitution. Though the appellant had been living in this *kotha* for years together, she has not led any evidence to the contrary about her earnings or about her livelihood. She had all opportunities to produce defence evidence and to show that she had some other source of earning but she did not produce any defence evidence. Thus, the trial Court rightly convicted her under Section 4 of ITP Act and sentenced her accordingly.

5. Section 5 of I.T.P. Act provides that causing or inducing a person to carry on prostitution is an offence. Testimonies of PW-1 to 4 prove it beyond reasonable doubt that these prostitutes were carrying on prostitution at brothel being run by the appellant. Section 5 does not talk of forcible prostitution. It talks of carrying on prostitution and of procuring girls for prostitution or inducing a person to become an inmate of a brothel or to take person for the purpose of

prostitution. Testimony of PW-1 shows that she initially carried on prostitution at *kotha* of Luxmi situated in the same building and she was later taken for prostitution by the appellant at her *kotha*. Accused Suman (PO) bargained with the appellant and after this bargain she was sent to *kotha* of Appellant. PW-2 Heena also testified that she was brought from Bangalore to Delhi by one Praveen and was left in *kotha no. 57* second floor for the purpose of prostitution. PW-3 also had a similar story that one lady brought her to Delhi on the pretext of getting good job and she was left at *kotha no. 57* and she had been indulging in prostitution at *kotha no. 57*. PW-4 Rakhi had also testified that she was sold at GB Road and left at *kotha no. 57*. PW-5 lady Constable Indu Bala testified about recovery of these four girls from *kotha no. 57*. PW-9 Madhu Sharma was part of the raiding party and had testified that she along with ACP Mr. B.K.Singh SHO Inspector Mr. G.S.Randhawa and with Roma Devra a member of NGO went to *kotha no. 57* second floor right side and they learnt that this *kotha* was owned by appellant Naseem Bano, raid was conducted and girls were recovered. From testimonies of all these witnesses it is apparent that the appellant was causing carrying on of prostitution by PW-1 to PW-4 at her *Kotha* and was guilty of offence under Section 5 of ITP Act. She was rightly convicted under Section 5.

6. In view of my above discussion I find no force in the appeal. The appeal is hereby dismissed. Appellant be taken into custody and sent to jail for undergoing rest of sentence.

January 17, 2011
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SHIV NARAYAN DHINGRA, J.