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

% Order Reserved on: September 23, 2011
Order Pronounced on: October 21, 2011

+ **Crl. Rev.(P) No.498/2008**

SMT. ANITA Petitioner
Through: Mr.Ajay Malviya, Advocate
versus

THE STATE Respondent
Through: Mr.Rajesh Mahajan, Additional
Standing Counsel (Crl.) for
State.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
 2. To be referred to Reporter or not?
 3. Whether the judgment should be reported in the Digest?
- No.

SUNIL GAUR, J.

1. Petitioner has been convicted for committing offence under Section 3 and 5 of the 'The Immoral Traffic (Prevention) Act, 1956', for running a brothel from Quarter No.1 on 3rd floor of a private colony in Srinivaspuri, Delhi, as in a raid conducted on 29th September, 2005 at about 4.25 pm it was found that three women were found soliciting customers for the purpose of prostitution.

2. Petitioner alongwith co-accused Surender and Saleem were sentenced by the trial Court to rigorous imprisonment for two

and half years each and the appeal preferred against the aforesaid conviction and sentence was dismissed by the Appellate Court vide order of 21st July, 2008.

3. The tenor of the revision petition filed is as if, it is the second appeal, whereas the scope of interference in revision is quite limited one, i.e., to see as to whether there is any illegality or infirmity in the order of the Appellate Court. Re-appreciation of evidence is not required to be undertaken. In this perspective, concurrent finding of guilt of the petitioner has been assailed by the learned counsel on the plea that the entire trial gets vitiated as the Inspector who had conducted the investigation was not vested with the power of Special Police Officer, in terms of Section 13 of 'The Immoral Traffic (Prevention) Act, 1956'. This very argument was raised before the Appellate Court which has been rightly repelled by referring to Notification dated 14.09.1998 which empowers the Assistant Commissioner of Police, all Station House Officers, etc., to conduct and supervise the investigation in terms of Section 13 of the aforesaid enactment. Thus, I find that the impugned order cannot be faulted on this ground.

4. So far as non-compliance of Section 15 of '*The Immoral Traffic (Prevention) Act, 1956*' is concerned, I find that the Special Police Officer is empowered to conduct a search without warrant and regarding non-joining of independent witnesses in the raid, experience has shown that public persons seldom come forward to join the raiding party. In any case, it is a mere irregularity and the trial is not vitiated on this account as the petitioner failed to show as to what prejudice is caused on account of non-compliance of this provision which is in effect directory and not mandatory. Way back in the year 1970, Apex

Court in its decision 'Bai Radha vs. State of Gujarat' AIR 1970 SC 1396 had held that non-compliance of Section 15 of '*The Immoral Traffic (Prevention) Act, 1956*', does not vitiate trial. Finding no illegality or infirmity in the impugned order, I find no scope for any interference so far as the merits of this case is concerned.

5. On the quantum of sentence, attention of this Court was drawn by petitioner's counsel to order of 14.1.2009 wherein it was noted that the Jail Superintendant had strongly recommended petitioner's release on medical ground as she was found to be suffering from several medical complications and the period of incarceration undergone by her by then was five and half months. While taking into consideration the deteriorating health of the petitioner and of her speech being impaired due to neurological complications, the substantive sentence imposed upon the petitioner was suspended.

6. Considering the fact that the petitioner was arrayed as an accused as the premises from where the brothel was running belonged to her and she could not substantiate her plea of giving the premises in question on rent to co-accused, and petitioner not found to be residing in any part of the premises in question or nearby, a lenient view on the point of sentence deserves to be taken as the case of the petitioner falls under sub-section 2 of Section 3 of the '*The Immoral Traffic (Prevention) Act, 1956*', which provides for imposition of rigorous imprisonment for a period upto two years. It is not the case of the respondent-State that the petitioner was earlier convicted for any offence under '*The Immoral Traffic (Prevention) Act, 1956*'. In the light of the Nominal Roll of the petitioner strongly recommending her release on medical grounds and in the peculiarity of facts of the instant case, it is deemed appropriate to reduce the substantive

sentence imposed upon the petitioner to the period already undergone by her, while imposing a fine of ₹2,000/- and in default thereof, petitioner has to undergo simple imprisonment for a period of three months.

7. While maintaining the conviction of the petitioner, with modification on the quantum of sentence as aforesaid, this petition stands disposed of. Trial Court to ensure compliance of this order.


(SUNIL GAUR)
JUDGE

October 21, 2011

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