

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**CRAA 25/2013**

**State through SHO P/S Rajbagh,  
Srinagar**

**...Petitioner/Appellant(s)**

Through: Mr. Waseem Gul, GA

**Vs.**

**Mushtaq Ahmad Sheikh and Ors.**

**...Respondent(s)**

Through: None

**CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER**

19.12.2025

1. Nemo for respondents.

2. The present appeal is directed against the judgment dated **30-11-2012** passed by the Court of the Principal Sessions Judge, Srinagar, arising out of FIR No. 683/1999 registered at Police Station Rajbagh for offences punishable under Sections 3, 4, 5 and 7 of the Suppression of Immoral Traffic Act, 1991 (hereinafter referred to as "*the Act*"), whereby the respondents were acquitted of the charges framed against them. The appellants have assailed the judgment of acquittal on the ground that it is unsustainable in law, asserting that there was overwhelming evidence on record to establish that the accused had converted a migrant house at Rajbagh into a brothel, taking advantage of the fact that the house had remained vacant for a long period. It was contended that the house was raided pursuant

to credible information, resulting in seizure of objectionable material. According to the appellant, the Trial Court discarded the entire prosecution evidence without assigning cogent reasons. It was further argued that even if minor contradictions existed in the testimonies of the witnesses, the Court was required to appreciate the evidence in its entirety and in its proper perspective, rather than drawing conclusions divorced from the material on record. The prosecution, it was claimed, had successfully proved the guilt of the accused beyond reasonable doubt.

3. Briefly stated, the facts leading to the registration of FIR No. 683/1999 under Sections 3, 4, 5 and 7 of the Act are that PW-Rafiqul Hassan, the then SDPO, Saddar, received reliable information that a migrant house situated at Rajbagh near the Post Office had been converted into a brothel and was being used by the respondents for unlawful consideration. Acting upon the said information, a raid was conducted, resulting in the arrest of the respondents. Upon completion of investigation, the accused were formally challaned, and a charge was framed against them on 29-11-2000. During trial, the prosecution examined only PW-Rafiqul Hassan and PW-Mir Rasiq, both police officials, whereas the remaining witnesses were not examined despite the fact that the trial commenced on 29-11-2000 and the prosecution failed to conclude its evidence for more than ten years. The Trial Court held that the statements of the two prosecution witnesses were shaky on the face of it and did not warrant examination of the respondents under Section 342 Cr.P.C. Consequently, the statement of the respondents was dispensed with, and the charge-sheet was dismissed.

4. For proper adjudication of the appeal, the testimonies of the two witnesses examined during trial, namely PW-Rafiqul Hassan and PW-Mir Rasiq, both

police officials, require careful appreciation. PW-Rafiqul Hassan deposed that upon raiding the premises, he found a co-accused along with other accused in a compromising position. He further stated that an auto-rickshaw was seized and that, on the basis of statements made by the accused, it was revealed that the house had been used for illegal activities for a long time, which prompted him to direct registration of the FIR. He claimed to have received the information telephonically and also stated that respondent No. 3 was sent for medico-legal examination. However, he categorically admitted that he did not inquire into the ownership of the house. He further stated that **PW-3 and PW-4** were civilian witnesses and neighbours residing in the adjoining locality. PW-Mir Rasiq, who was posted with the complainant, deposed that one lady and two boys were arrested from the said house, as he was told that they had been found in a compromising position. Significantly, apart from these two witnesses, no other witness was examined, and even PW-3 and PW-4, who were claimed to be independent civilian witnesses, were not produced before the Trial Court.

5. The respondents appear to have been charged for offences punishable under Sections 3, 4, 5 and 7 of the Act. Having regard to the fact that Section 7 of the Act prescribes rigorous imprisonment extending up to ten years, the challan was committed to the Court of Sessions for trial in accordance with Schedule-II of the then applicable J&K Code of Criminal Procedure.

6. Have seen record and heard the appellant's Counsel. Section 3 of the Act of 1991 provides that any person, who keeps a brothel, allows premises to be used as a brothel, or assists in the keeping or management of a brothel, including the occupier thereof, is liable to punishment as prescribed under the Act. Section 4 defines a "brothel" to mean a place which is used or

allowed to be used for the purpose of prostitution. Section 5 further makes it punishable to keep or allow any premises to be used as a brothel. Under Section 7, a person who procures or attempts to procure any woman or girl for the purpose of prostitution commits an offence under the Act, which attracts rigorous punishment. Section 13 authorises any Gazetted Police Officer, or any police officer specially empowered in writing by the Superintendent of Police, to arrest without warrant any person committing an offence under Sections 6, 7, 8, 9 and 10 of the Act, if such officer has reason to suspect commission of an offence under the Act. Section 14 empowers the Superintendent of Police or any Gazetted Officer specially authorised in writing by the Superintendent of the District to enter any place if he has reason to believe that an offence under Section 5 is being committed or that a woman or girl in respect of whom an offence under Sections 6, 7 or 8 has been committed is present therein.

7. In the present case, though the prosecution claims that reliable information was received by PW-Rafiqul Hassan, there is not even a whisper on record to show that the said officer was specially empowered by the Superintendent of the District, as mandated under Section 14 of the Act. The house in question was situated within the municipal limits of Rajbagh and was admittedly a migrant house. Even though the SDPO concerned was a Gazetted Police Officer, nothing has been placed on record to establish that he was specifically authorised to enter and search the premises. The prosecution version is that the house was being used for immoral trafficking and had been converted into a brothel, where respondent No. 3 was allegedly found in a compromising position with one of the accused.

8. A plain reading of the Act reveals that it does not criminalise the act of prostitution by a woman per se. Section 6 makes punishable the act of living on the immoral earnings of another person. Sections 7 and 8 also do not contemplate prosecution of a woman merely on account of her involvement in prostitution. Section 10 applies where a person detains any woman or girl against her will in a brothel, whereas Section 11 makes punishable the act of encouraging or abetting the prostitution of a girl. Even assuming, for the sake of argument, that respondent No. 3 was found in a compromising position with any of the other respondents, that too in a private house and not in a public place, it was incumbent upon the prosecution to obtain the requisite authorisation under Section 14 of the Act before initiating any action, which is conspicuously absent in the present case.

9. Apart from the testimonies of the informant and a fellow police official, there is no independent corroboration to establish that the respondents were indulging in immoral activities in the migrant house. Even the owner of the house was not examined. The Trial Court has rightly observed that despite the trial remaining pending for more than ten years, the prosecution failed to produce PW-3 and PW-4, who were projected as civilian witnesses, and such non-production clearly attracts an adverse inference against the prosecution. Prostitution, as understood under Section 4, implies promiscuous sexual intercourse for hire, whether in money or in kind, and a brothel denotes a place kept or used for such purposes. Whether respondent No. 3 was engaged in prostitution in the company of other respondents was a fact required to be proved by cogent evidence. However, the evidence on record does not disclose that respondent No. 3 was subjected to or involved in promiscuous sexual intercourse for hire. In the absence of clinching evidence to establish

that the premises were being used as a brothel, no presumption could be drawn that the migrant house had been converted into one. The investigating agency appears to have proceeded without properly appreciating the provisions of the Act and failed to substantiate the accusations before the Court of law. The presumption of innocence in favour of the respondents having remained intact throughout the trial, and the prosecution having failed to prove the charges, such presumption stands reinforced, leaving no scope for the appellate court to interfere with the acquittal recorded by the Trial Court.

**10.** Upon a careful perusal of the record, the judgment of the Trial Court, and the averments made in the memo of appeal, it appears that the appeal has been filed without a proper reappraisal of the evidence led during trial. The appellant has placed reliance upon statements recorded under Section 161(1) Cr.P.C. without demonstrating how such statements were substantiated or sustained during the course of trial. Consequently, the appeal is devoid of merit and is, accordingly, *dismissed*.

**(SANJAY PARIHAR)**  
**JUDGE**

**SRINAGAR:**

19.12.2025

*Akshil Dev*

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|----------------------------------|-----|
| Whether the order is speaking?   | Yes |
| Whether the order is reportable? | No  |