

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.482 OF 2004

NAVNATH
SITARAM
WAGHMARE

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1)Mrs. Rupa Govind Nepali,
Age: 35 Yrs., Occu.: Housewife,
R/at - 994, Budhwar Peth,
Pune- 411002.

2. Mrs. Rita Jithbahadu Thapa
Age 45 Yrs., Occu.: Housewife,
R/at- 994, Budhwar Peth,
Pune 411002.

(presently at Yerwada Central Prison, Pune).

... Applicants

Versus

The State Of Maharashtra

...Respondent

Mr. Anay Joshi a/w Mr. Digvijay S. Kachare i/b K.S. Patil for the
Applicants.

Mr. D.J. Haldankar, APP for the Respondent/State.

CORAM : M.M. SATHAYE, J.

DATE : 29th AUGUST, 2026

ORAL JUDGMENT :

1. Invoking Section 397 read with Section 401 of Criminal Procedure Code, 1973 ('CrPC' for short), the Revision Applicants (original accused) are challenging judgment and order dated 14.12.2004 passed in Criminal Appeal No. 139 of 2004 by 1st Ad-hoc Additional Sessions Judge, Pune dismissing the said appeal filed by the Applicants and confirming the conviction as well as sentence passed by the 9th Ad-hoc Assistant Sessions Judge, Pune in Sessions Case No. 68 of 2004 holding the Applicants guilty of offence punishable under

Section 373 of Indian Penal Code, 1860 ('IPC' for short) and sentencing them to undergo rigorous imprisonment of 3 years with fine of Rs. 500/- each and in default sentence to undergo of rigorous imprisonment of 6 months. By the impugned orders, the Applicants have been acquitted of the offence punishable under Section 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 ('PITA Act' for short).

2. The case of the prosecution in short is that on 12.12.2003, information was received by the Complainant - PSI Shailesh S. Sankhe (PW-1) attached to the Samarth Police Station, that a brothel is being run in building No. 994, Budhwar Peth, Pune (the 'said building' for short) where minor girls were used for prostitution. Accordingly, the said building was raided along with two panchas. When the raiding party reached second floor, they notice that there were number of girls present with Applicant No.1 in Room No. 14-B and Applicant No.2 in Room No 11-B, wooden compartments were found where beds were arranged. Panchnama was drawn. Some of the girls were minors. The girls were taken to Samarth Police Station, complaint was lodged and Crime No. 3562 of 2003 came to be registered. Investigation was handed over to Mr. Sonba Panchundekar (PW-9), who was acting as Police Inspector at the relevant time.

3. Statement of the girls were recorded and they were sent for medical examination at Sassoon Hospital, Pune. They were examined clinically and radiologically. The concerned Medical Officer/Doctor has issued certificates. Based on material gathered, chargesheet was filed against the Applicants. The Applicants pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 10 witnesses, viz. PW-1 Shailesh Sunil Sankhe who was attached to Samarth Police Station as

PSI at the relevant time, PW-2 Mr. Shivaji Laxman Chavan who is a panch witness, PW-3 Shrirang Sampat Pawar who was attached as Assistant Sub-Inspector at Samarth Police Station, PW-4, PW-5 and PW-6 are victim girls, PW-7 Ramkrishna Govindrao Bhusale who is a professor in B.J. Medical College, Sassoon Hospital at Pune, PW-8 Dr. Deepali Gandhale, who was attached to B.J. Medical College, Pune at the relevant time, PW-9 Mr. Sonba D. Panchundekar, the Investigating Officer, PW-10 Mr. Ashok Jagannath Bhoi, who was incharge Police Inspector of Samarth Police Station. The statements of the Applicants under Section 313 of CrPC were recorded. Their case is of complete denial.

5. Learned 9th Ad-hoc Assistant Sessions Judge, Pune who heard and tried the said case, on appreciation of evidence held that the offence under Section 3 and 4 of the PITA as not proved. However, it was held that accused had obtained possession of minor girls with intent of their use for prostitution or illicit intercourse with another person and therefore, convicted the Applicants under Section 373 of the IPC. The Applicants filed Criminal Appeal No. 139 of 2004, which has been dismissed by the impugned order dated 14.12.2004.

6. In these circumstances, the Applicants have filed present revision Application challenging concurrent findings. The revision is admitted on 10.02.2005 and the revision Applicants were granted bail on the same terms on which they were on bail before the lower Court.

SUBMISSIONS

7. Learned Counsel Mr. Joshi appearing for the Applicants submits that out of 2 panch witnesses, only one was examined who has turned hostile and therefore the panchnama is unreliable. He submitted that there is material discrepancy /contradictions in the statements made by

PW-1 Mr. Sankhe and PW-3 Mr. Pawar about presence of female panch and about who prepared panchnama. He submitted that evidence has been led within a short period of 2-3 months therefore, there is no justification for such discrepancy and therefore their evidence is doubtful. He further submitted that no photographs were taken during the raid. He submitted that no female police officer was present while conducting the raid/arrest and it was contrary to the prevailing guidelines/directions issued by this Court as well as Supreme Court. He further submitted that PW-7 Mr. Bhusale has admitted that he is not a radiologist as such his opinion in respect of ossification test is not reliable.

8. On the other hand, learned APP Mr. Haldankar appearing for the State, supported the impugned order contending *inter alia* that the PW-7 is a Medico Legal Expert and even though he is not a radiologist, his opinion based on clinical examination as well as X-ray cannot be doubted. He submitted that it is sufficient to indicate that at least some of the girls, found during raid/arrest, were minors. He submitted that 3 prosecution witnesses are victim girls who have stood up in support of the prosecution case, stating that the Applicants were charging money from the customers for their use in prostitution and part of money was paid to victims, which clearly established ingredients of Section 373 of IPC. So far as the argument about the requirement of female police officer's presence during raid/arrest is concerned, he submitted that there was no such statutory requirement at the relevant time in December 2003 and the amendment is introduced in Section 46 of the CrPC much later in December 2009. He further submitted that ingredients of offence are clearly proved and in given circumstances absence of female police officer is not fatal. He further submitted that if

cross-examinations are perused then no such suggestion has been given before the courts below. He submitted that already lenient view has been taken and punishment of only 3 years of rigorous imprisonment has been awarded. Lastly, he submitted that considering the nature of offence and concurrent findings, no interference is required.

REASONS AND CONCLUSION

9. I have considered rival submissions and perused the record.

10. At the outset, it must be noted that the revisional jurisdiction of this Court is limited and this Court cannot re-appreciate the evidence to come to a contrary conclusion. Useful reference can be made to Paragraph No. 5 of **State of Kerala Vs. Puttumana Iliath Jathavedan Namboodiri** and Paragraph No. 16 of **State Vs. Manimaran (2019) 13 SCC 670**.

11. I have perused the oral evidence of various witnesses including that of the victims.

12. PW-7 Professor Bhusale has been working as Medico Legal Expert mainly dealing in ascertaining the age of persons on clinical and radiological examination. This witness has stated that he has examined all the girls who were brought for medical examination. He has stated that he has examined the girls clinically and radiologically. In respect of one of the victims, he has clearly stated that on clinical and radiological examination the age is found to be 13 to 15 years.

13. In **Vinod Katara Vs. State of Uttar Pradesh (2023) 15 SCC 210**, the Hon'ble Supreme Court has observed as follows:

“61. The bone ossification test (hereinafter "the ossification test") is a test that determines age based on the "degree of

fusion of bone" by taking the x-ray of a few bones. In simple words, the ossification test or osteogenesis is the process of the bone formation based on the fusion of joints between the birth and age of twenty-five years in an individual. Bone age is an indicator of the skeletal and biological maturity of an individual which assists in the determination of age. The most common method used for the calculation of the bone age is radiography of the hand and wrist until the age of 18 years beyond which the medial age of clavicle is used for bone age calculation till the age of 22 years as the hand and wrist bone radiographs cannot be computed beyond 18 years of age as the elongation of the bone is complete after adolescence. However, it must be noted that the ossification test varies slightly based on individual characteristics, therefore the ossification test though is relevant however it cannot be called solely conclusive."

14. Therefore, it is necessary to note that in ossification test there is nothing else but an X-ray of the concerned person and medical opinion of the doctor involved. In the present case, PW-7 has clearly stated that he has examined the victims both clinically and radiologically. In that view of the matter, even if PW-7 is not a radiologist, his medical opinion on clinical and radiological examination about age of the victim, cannot be doubted. He has identified and proved medical certificates issued by him at Exh.18 to 26.

15. PW-8 Dr. Gandhale has also stated in her evidence that about 9 girls were produced before her for medical examination where she has found that the girls were subjected to habitual sexual intercourse. She has proved the medical certificates Exh.35 to 41

16. One of the victim has been certified as 13 to 15 years old. Therefore, assuming error margin of 2 years plus or minus, still one of the victims is found to be minor.

17. PW-4 victim has stated that Applicant No. 1 used to beat her and force her to engage in prostitution. This witness has identified Applicant No. 1 as the woman who compelled her to do prostitution. This witness has also stated that Applicant No. 1 took money from the customer and part of it was paid to the victim. PW-5 victim has stated that Applicant No. 1 was compelling her to engage in prostitution activity, who was charging each customer Rs. 80/- and giving the victim Rs.10/- per customer. PW-6 victim has also stated that Applicant No. 2 was forcing her to engage in prostitution and on her refusal, Applicant No. 2 would beat her.

18. In view of such clearly corroborating evidence coupled with one of the victims being clearly found minor, all the necessary ingredients of Section 373 of IPC of buying, hiring or otherwise obtaining possession of a person under the age of 18 years with intent that such person shall be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, are made out and proved.

19. So far as the argument about absence of female police officer at the time of raid/arrest of the Applicants, is concerned, judgments of the **Christian Community Welfare Council of India and Anr. Vs. Government of Maharashtra and Anr. 1994 Mh.L.J. 1769** and **State of Maharashtra Vs. Christian Community Welfare Council of India and Anr. (2003) 8 SCC 546** are relied upon by the learned counsel for the Applicants contending *inter alia* that even in December 2003, though Section 46 of CrPC was not amended, however, guidelines issued by this Court were in place.

20. In this respect, it is material to note that at the relevant time in

December 2003, proviso to Section 46 of CrPC (introduced w.e.f. 31.12.2009) was not on the statute book. As such, there was no statutory requirement of female police officer's presence at the time of arrest. So far as guidelines relied upon by learned counsel for the Applicants is concerned, the Hon'ble Supreme Court in **State of Maharashtra Vs. Christian Community Welfare Council of India (Supra)** has observed that notwithstanding the object behind the directions issued by this Court, strict compliance with the said direction, in a given circumstance, would cause practical difficulties to investigating agency and might even give room for evading the process of law by unscrupulous accused. The Hon'ble Supreme Court has therefore directed that while arresting a female person, 'all efforts should be made' to keep a lady constable present but in the circumstances where arresting officers are reasonably satisfied, that such presence of a lady constable is not available or possible and/or delay in arresting caused by securing the presence of lady constable would impede the course of investigation, such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest, be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without presence of a lady constable.

21. Firstly, it is important to note that no such contention was raised before the Trial Court as well as Appellate Court. The Hon'ble Supreme Court's observation are only directory and not mandatory, in as much as, the Hon'ble Supreme Court has stated that 'all efforts should be made'. In that view of the matter, in the teeth of concurrent findings and considering the nature of offence involved, such contention raised for the first time in revisional jurisdiction, is not sufficient for

interference in the order of conviction.

22. Same is the case with the submission about raid not being photographed. No such contention is raised before the Trial Court or Appellate Court. Therefore, it cannot be held sufficient to interfere in revisional jurisdiction.

23. Trial Court has considered that though the panch witness examined by the prosecution has turned hostile, the prosecution has examined witness PW-10 In-charge PI Mr. Ashok Bhoi who has prepared the panchnama. The Trial Court has held that this witness has effectively proved the panchnama, which reveals about the factual position of the room and arrangements therein for the purpose of running prostitution business. The panchnama is signed by this witness and it is at Exh-47. This witness has identified his signature on the panchnama. I have perused cross-examination of this witness. A question was put to this witness in cross-examination which led to the answer that the raiding team had made enquiry with the prostitutes who were standing at the ground floor for their readiness to act as panch, but they had refused. He has clearly denied a suggestion that panchnama was prepared in police station. He has also denied suggestion that no such raid was conducted in the concerned building/room. He has also denied suggestion about minor girls not being found in the rooms.

24. While testing the veracity of the prosecution's case about the raid conducted, the Appellate Court has rightly held that the police officials who were members of the raiding party (PW-1, PW-3 & PW-10) have unanimously stated that on 12.12.2003 the said building was raided. All of them have testified that during the said raid, the said two rooms

were searched and they are consistent on the point that Applicants were found in the said rooms. The Appellate Court has further considered that according to the statements of these police officers, they noticed number of cabins with beds and the girls on enquiry disclosed that they were compelled by both the Applicants to engage in prostitution. In view of such consistent statements made by said prosecution witnesses who were part of raiding party, minor discrepancies about presence of lady pancha has been held not sufficient to discard the evidence.

25. In offences, where prostitution is involved and brothels are raided, often the victims who are rescued are not in a position to give clear statements. For obvious reasons they are not willing to give statements to police, much less stand in the Court for that. Therefore, much depends on the prosecution witnesses such as police officers and panchas. Therefore, minor contradictions in evidence of prosecution witnesses cannot be held as fatal to the prosecution case. The Trial Court at the end of paragraph No.11 has rightly held that in cases of such raids, no independent witness is expected to remain present.

26. In the present case, though the panch witness has turned hostile, the Courts below have found PW-10 as a reliable witness.

27. In that view of the matter, the submission about panchnama being unreliable does not have any merit. The alleged contradictions and discrepancies between statements of PW-1 and PW-3 about presence of lady panch witness, cannot be held to be fatal. They do not amount to material contradictions, in the facts and circumstances of this case.

28. Viewed in the light of what is observed above, when the

judgments of the Trial Court and Appellate Court are considered, in my view, there is no perversity. Concurrent findings of facts do not require any interference in the limited revisional jurisdiction of the this Court.

29. Learned APP has rightly submitted that the Courts have already taken lenient view in as much as the offence under Section 373 of IPC provides for maximum imprisonment for a term of 10 years. However, Applicants have been awarded only 3 years of rigorous imprisonment. Hence, no fault can be found with the sentence as well.

30. In the the aforesaid facts and circumstances and for reasons indicated above, there is no reason to interfere. The criminal revision application is accordingly rejected. The Applicants' bail bonds are canceled and they are granted 4 weeks time to surrender before the concerned police station.

(M.M. SATHAYE, J.)