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

CNR No. DLHC013286172017

+ CRL.L.P. 422/2017 and CRL.M.A. 12027/2017

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr.Naresh Kumar Chahar, Advocate.

versus

FARIDA THAPA @ KALI

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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17.08.2026

1. The present petition seek for leave to appeal against judgement dated 29.08.2026 (“**Impugned Judgement**”) passed by ASJ-Special, FTC-2, Central, Tis Hazari Courts, Delhi whereby, the respondent has been acquitted from the offence under Sections 366/370/370A(2)/343/109 r/w 376/34 of the Indian Penal Code, 1860 (**‘IPC’**) and Section 3, 4 and 5 of the Immoral Traffic (Prevention) (**‘ITP’**) Act, 1956 and 34 of the IPC.

2. The Trial Court *vide* the Impugned Judgement has acquitted the respondent herein from all the charges framed against her and convicted and sentenced another co-accused Kanchi Tamang for offences punishable under section 3 of the ITP Act.

3. The prosecution case, as emerging from the record, is that on 21.12.2014, a PCR call *vide* DD No. 10A was received at police station Kamla Market, Delhi regarding three girls who had escaped from a brothel house at G.B. Road and were present near New Delhi Railway Station, Ajmeri Gate, Delhi. SI



Padam Singh reached the spot and brought them to the police station, where their statements were recorded. One of the victim, stated that she was an illiterate agricultural worker, her mother was a housewife and she had a younger brother studying in Class VI. She stated that about four months earlier, she had met one Sapna at Gaudiya Railway Station, who told her that she has brother namely Sagar and she wants to marry his brother with her.

4. Thereafter, upon developing communication with Sagar, they married at a temple, following which Sagar brought her to Delhi by train and then to the house of one Sarika Didi. Victim further, stated that Sagar had engaged in “*galatkaam*” and taken her to Kotha No. 59, G.B. Road, where Sarika allegedly handed her over to another person for the purpose of “*galatkaam*”. She further stated that Kali had provided her clothes and compelled her to establish physical relations with customers and thereafter take money.

5. During her stay, she allegedly became acquainted with another girl, prosecutrix ‘P’, who had also been brought there on the pretext of employment. On 21.12.2014, Sapna, Kali, prosecutrix ‘P’ and another girl, prosecutrix ‘M’, allegedly planned to leave the premises. They reached New Delhi Railway Station and sought assistance from a taxi driver, who informed the police.

6. Mr. Naresh Kumar Chahar, learned counsel for the respondent-State eloquently submits that the impugned judgement of acquittal is perverse and the Court has failed to consider the material available on record.

7. After hearing Mr. Chahar at length and considering the material on record, the Court finds that the Trial Court has rightly appreciated the entire material whether oral or documentary, and has come to conclusion that owing to major contradictions in the evidence of the prosecution witnesses, the respondent cannot be convicted for the charged offences.

8. Finding rendered by the Trial Court in paragraph nos. 102 to 107 are extracted as under:

“102. PW5 Prosecutrix 'B' is the complainant, on whose complaint present



case was registered. This witness has deposed in her testimony that Sagar (since not arrested) has married her and she had not informed her parents about her marriage with Sagar and Sagar had brought her to Delhi by train and after reaching Delhi, Sagar (since not arrested) had taken her to the house of one SarikaDidi in the TSR and he kept her there in that house for about 10 days. Sagar established physical relations with her during this period. After 10 days, Sagar told her that he cannot take her to his house as he does not have money and told her that she will have to work with SarikaDidi for about five days and thereafter, he will take her to his house with him and Sagar left from there and Sarika had taken her to Kotha No.59, left side, second floor at G.B. Road. This witness further states that Sarika handed her over to one lady namely Kali and thereafter Sarika left from there whereas in her statement u/s 164 Cr.P.C. states that Sagar has sold her to Sarika and nowhere name of accused Kali has been mentioned.

103. Complaint of prosecutrix 'B' further reflects that Kali had taken her and prosecutrix 'P @ R' to the house of Sarika where other prosecutrix 'M' also met her and one day after finding suitable time all of them ran away from the house of Sarika and they reached at New Delhi Railway Station by TSR where they met with a taxi driver and narrated all the incident to him and asked him for help. He made a call at 100 number from his mobile number and called the police whereas in her statement u/s 164 Cr.P.C. prosecutrix stated that taxiwala had taken her to police station. There is major contradiction by which statement of prosecutrix 'B' which cannot be appreciated. There is also a major contradictions in the testimony of this witness. Hence, testimony of this witness also cannot be appreciated.

104. Further, statement of prosecutrix 'M' also have major contradictions which cannot be appreciated. In her statement u/s 164 Cr.P.C., she stated that Sagar, his didiSapna and Sarika be punished.

105. On close scrutiny of testimony of all the three prosecutrix made before this court and their statement before police and before magistrate u/s 164 Cr.P.C. are entire different. All the statements are on same track at every stage prosecutrix have made improvement in their statement u/s 164 Cr.P.C. and statement before the court. Hence, testimonies of prosecutrix cannot be relied upon and cannot be appreciated for which benefit goes to the accused. Accused Raju, Sagar, Sapna and Sarika who are main offender of human trafficking as per the testimony of prosecutrix, they have not been arrested. They may tried as and when they produced before the Court.

106. Since no journey ticket has been placed by the victims. Neither police had placed any statement of parents of victims that victims had missed or left the West Bengal or there is no record that victims had reached Delhi or that she was confined by the accused in her house. It has also not come on record that anyone abated her for indulging in rape. Accordingly, accused Farida Thapa @ Kali is acquitted from charges u/s 366/370/370A(2)/343/109 r/w 376/34IPC.

107. As far as Section 3, 4 and 5 of I.T.P. Act against the accused Farida Thapa @ Kali is concerned, from the entire evidence available on record it has not been proved that house of accused KanchiTamang was being used as a



brothel. No evidence of neighbouring persons have been taken by the police during the course of investigation and mere submission that house was being used as a brothel is not sufficient to hold any person guilty in that offence. Since it has come on record that prosecution has failed to prove that victim was procured for prostitution. Again police had not examined any neighbouring persons or independent witness where the premises were being used for prostitution. Police has not produced any documents by which it may be proved that accused Farida Thapa @ Kali was running or keeping or running prostitution or procuring, inducing or taking any person for the sake of prostitution. Hence, accused Farida Thapa @ Kali is acquitted from the charges u/s 3, 4 and 5 of ITP Act/34 IPC.”

9. For the purpose of establishing the offences under Section 366 of the IPC, it is essential that the victim is abducted with intent that she may be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, The impugned order, after careful consideration of the evidence, arrived at the conclusion that that the complainant/victim was not compelled or forced and, importantly, no journey ticket has been placed by the victims. It has also not come on record that anyone abated her for committing rape. Thus, the very threshold essential ingredient for the offence is not made out.

10. Similarly, for establishing the offence of Section 370 of the IPC, the following ingredients are essential:

First.—using threats, or

Secondly.—using force, or any other form of coercion, or

Thirdly.—by abduction, or

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

11. The Impugned Order, as narrated above, does not disclose the essential elements being established. Further, for the purpose of establishing the offences under Section 3, 4, and 5 of the ITP Act, it is essential that the victim is taken for the purpose of prostitution. However, the Impugned Order, renders a categorical finding based on the evidence on record that the allegation of the



victim being forcefully taken away for prostitution was not made out. Thus, the very threshold essential ingredient for the offences is not made out. The complaint thus cannot be continued with.

12. Section 3 of the ITP Act reads as under:

“3. Punishment for keeping a brothel or allowing premises to be used as a brothel.

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who-

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel.

Shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.”

13. It is further noted that *qua* co-accused Kanchi Tamang, the Trial Court found that the premises owned by her namely Kotha No.59, 2nd floor, left side, G.B. Road, Delhi, was utilised by her as a brothel. Section 3 of the ITP Act was, thus, *ex facie* made out.

14. In *H.D. Sundara v. State of Karnataka*, the Supreme Court discussed the scope of an appeal against an acquittal order, the material portion of the said



decision reads as under:

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLineKar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4.If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5.The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

(Emphasis supplied)

15. In *Jafarudheen v. State of Kerala*, the Supreme Court further held as under:

“25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

16. Bearing in mind the principles laid down by the Supreme Court, there is no ground to interfere with the impugned judgment dated 29.08.2026.

17. Accordingly, the present petition stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 17, 2026

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