

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 60 OF 2014

The State of Maharashtra	..Applicant/Appellant
V/s.	
Chand Mohammad Habib Miya	.. Respondent

Mr.A.R. Patil, for applicant/appellant.
Mr.Prabhanjay R. Dave, for Respondent.

CORAM : A. R. JOSHI, J.
DATE : 17TH JUNE, 2015.

P.C.

1. Heard learned APP for State and also heard learned counsel for the respondent-original accused.

2. This is an application for leave to file appeal challenging the acquittal of the respondent passed by the Appellate Court on 9th October, 2012, acquitting the respondent of the offence punishable under section 3(1), 4(1) and 7(1)(b) of Immoral Traffic (Prevention) Act.

3. Initially the respondent was tried for the said offences before the Metropolitan Magistrate, Special Court, for ITPA, 54th Court, Mazgaon, Mumbai and respondent was

convicted for the offences vide order dated 16th July, 2010. This conviction was awarded on the premise that the presumption is required to be drawn when the victim girls were found in the premises which was raided and that the said premises was being used as a brothel. Being aggrieved by the said conviction respondent preferred appeal before the Sessions Court, Mumbai and it was so allowed vide order dated 09th October, 2012. The reasoning given by the first Appellate Court is gone through as also the reasoning given by the Appellate Court as to substantive evidence of the victim girls and evidence of their age is also looked into. The Appellate Court had come to the conclusion that the victim girls and specifically witness No. PW-4 and PW-5 cannot be treated as minor girls so as to attract penal provisions of the act as to compelling the minor girls to enter into sexual business. Further, Appellate Court came to the conclusion that the definition of the words 'Brothel' and 'Prostitution' as contemplated by provisions of Sections 2(a) and 2(f) were not fulfilled by bringing relevant material by the prosecution before the Trial Court. The Appellate Court came to the conclusion

that there was no proper appreciation of evidence by the Trial Court and it committed an error in recording finding for establishment of offences under sections 3, 4 and 7 of the Act. While interfering the order of the acquittal passed by the Appellate Court and while scanning the material available and considering mainly the substantive evidence of the victim, the view taken by the first Appellate Court cannot be consider as pervert, so as to interfere with. In this view of the matter there is nothing to re-agitated the issue again by allowing the State to file appeal and reappraise the material afresh. As such there is nothing in the application for leave to file appeal and same is accordingly dismissed and disposed of.

(A. R. JOSHI, J)