

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 70 OF 2014

1. Amjad @ Babu Mainuddin Mandal
R/at : Babu Patil Chawl, Behind Macchi
Market, Section-6, Sarsole, Nerul,
Navi Mumbai.
Native Place : Taksali, Post Mamjol P. Stn.
Ramarant, Dist: Nadiya, State of Bangal (W)

2. Raj Dasharath Parida @ Gurucharan Bapi
R/at : Babu Patil chawl, Behind Macchi Market,
Sector-6, Sarsole, Nerul, Navi Mumbai.
Native Place: Gramsard, Post. Goapal
Dist: Balesar, State of Orissa.

3. Gayadhar @ Dipak Kusha Shahu @ Changanal
R/at : Namdev Bhagat Chawl, R. No. 16,
Near Bathroom, Sector-18, Nerul, Navi Mumbai.
Native Place : Asuriya, Post. Afariya, Tal: Kaira
Dist: Baleshwar, State of Orissa

..Appellants

V/s.

The State of Maharashtra

.. Respondent

WITH
CRIMINAL APPEAL NO.74 OF 2014

Gunakar Sinna Shetty
Residing at Adarsh Apartment,
E 1/6, Room No. 6, Sector-2,
Nerul, Navi Mumbai.

..Appellant

V/s.

The State of Maharashtra

.. Respondent

Mr. Ganesh Gole for the Appellant in Cri. Appeal No.70 of 2014

Mr.Ajit M. Savagave for the Appellant in Cri. Appeal No.74 of 2014

Mrs.A.A.Mane APP for the Respondent State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : DECEMBER 22, 2015.

JUDGMENT:

Appellants in Criminal Appeal No. 70 of 2014 are convicted for offence punishable under section 366 (A) and 372 of Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1000/- each in default to suffer rigorous imprisonment for six months. They are also convicted for offence punishable under section 4 & 5 of Immoral Traffic (Prevention) Act, 1956 and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 1000/- each in default to suffer rigorous imprisonment for six months. Appellant in Criminal Appeal No. 74 of 2014 is convicted for offence punishable under section 3 of PITA, 1956 and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 1500/- in

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default to suffer rigorous imprisonment for three months vide Judgment and Order dated 06/01/2014 by Sessions Judge, Mumbai in Sessions Case No. 362 of 2009. Hence, this appeal.

2) Such of the facts necessary for the decision of this appeal are as follows.

(i) That on 17/06/2009 Brian Francis D'costa who is the representative of International Justice Mission (Herein after referred as "IJM") along with Rajkumar Birsing Tak met Babu Mainuddin Mandal (Accused no. 1) at hotel Nityananad at Ulhasnagar. Accused Babu had informed Brian and Rajkumar that he provides minor girls for prostitution at Nerul and if they wish to see the girls, they can see them in Chandani Palace Bar at Dombivli. On 19/06/2009, Babu shown those girls to them in Chandani Palace Bar at Dombivli. Out of 6 girls, three girls were minor. Upon inquiry, girls had disclosed to Brian D'costa that Babu used to take them for the purpose of prostitution and allowed them to return to their houses. Babu had also introduced Dipak (Accused No. 3) to Brian. Dipak had offered to show more girls on 29/06/2009 and assured them that he would arrange for the same.

(ii) On 29/06/2009 Brian & Rajkumar went to Indian Spice Hotel, Nerul,

Sector-4 where they met accused nos. 1 to 3. Rajkumar was carrying a hidden camera for the purpose of video shooting. Accused nos. 1 to 3 had brought 9 girls in the hotel. Brian and Rajkumar inquired with the girls who had expressed their willingness for prostitution. Out of 9 girls, 5 to 6 girls appeared to be minor. Accused no. 2 had quoted Rs. 1500/- for one girl. They decided to meet at Diamond Palace Hotel at Nerul on 03/07/2009. That in the intervening period i.e. on 01/07/2009 Brian met accused nos. 1 to 3 at Nerul at Diamond Palace Hotel. They paid Rs. 3000/- to Prakash Shetty (Accused No. 6) who was the cashier of Diamond Palace Hotel towards booking amount of the hotel rooms on 03/07/2009.

(iii) On 03/07/2009, Brian along with his colleagues who are representatives of IJM went to the office of Police Commissioner at CBD Belapur and informed them about the activities of the accused and further requested them to provide two panchas. They had also produced the C.D. before the police which was recorded by Rajkumar. They had also provided the transcript of conversation. That the police had decided to conduct the raid under the guidance of Special Police Officer Mr. Chalke (PW 9). Tainted currency notes were given to the decoy witness. They had been to Diamond Palace where

they met accused nos. 1 to 3. accused had shown them a room on the first floor which was occupied by 7 to 8 girls. It was informed that there are some more girls in other rooms. Rajkumar has acted as bogus customer. Girls had disclosed to Rajkumar that they were ready for prostitution. He had taken one girl in room no. 205. The pre-determined signal was given to the police and the police along with Panch no. 2 and representatives of NGO raided the premises on 2nd floor. They had accosted the manager and two waiters. Third waiter escaped. Police had also taken 16 girls in their custody. The tainted currency notes were seized. Brian D'costa lodged F.I.R. on the basis of which crime no. 36 of 2009 was registered against the accused for offence punishable under sections, 3,4,5 & 7 (a) of Immoral Traffic (Prevention) Act, 1956.

(iv) Investigation was completed and charge-sheet was filed against the accused. Case was committed to the court of Sessions and registered as Sessions Case No. 362 of 2009. Prosecution examined as many as 9 witnesses to bring home the guilt of the accused.

3) P. W. 1 Brian D'costa is the first informant. He has deposed before the court that he is working with IJM since 2005. According to him, the said

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organization used to collect the secret and confidential information about the trafficking of minor girls and they used to supply the said information to the local police.

4) At the outset, it is necessary to mention that in the present case, information was not given to the concerned police station, but the information was given to Commissioner of Police directly. The said information was then given to Deputy Police Commissioner, Mr. Chalke, Nerul Division and it was then decided that the raid was to be carried out.

5) P.W. 1 has deposed in consonance with the report lodged by him which is marked at Exhibit 44.

6) In the cross-examination, P.W. 1 has specifically admitted that his statement/complaint was not reduced into writing by the police. Complaint typed on a computer was the complaint on the basis of which crime was registered. That he is working as liasion officer in IJM and it is incumbent upon him to submit the daily work report to his superior. It is admitted that he had not informed his superior about the incident dated 03/07/2009. That he had commenced the work in the present transaction since 17/06/2009. From 17/06/2009 till 03/07/2009 he was submitting daily report to his superior

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officer. That on 17/06/2009, he had been to Nityanand Bar for ascertaining the truth about the trafficking. He could not recollect as to whether he had visited the hotel Nityanand Bar prior to 17/06/2009. It is admitted that Nityanand Bar is a Ladies' Bar. He was aware that at the time of incident, there was a ban on dance bar. He also could not recollect as to whether there was a lodging house of Chandani Bar. It is admitted that there are many more ladies' bar in the said vicinity surrounding the Chandani Bar. It is also admitted that two girls who were seen in Nityanand Bar were also in Chandani Bar. On 01/07/2009, he had not disclosed the names of minor girls. He had no knowledge as to whether the girls were confined. Only after lodging of F.I.R., he had learnt that the said girls who were offered for prostitution were residing at different places. It is admitted that as per the recitals in the F.I.R. none of the girls offered for prostitution was below 18 years of age and none of them had informed the complainant that they had been forced into trafficking.

7) It is also admitted that Indian Spice Hotel is a family restaurant and bar. The restaurant is on the first floor. The person who was recording the episode i.e. Rajkumar had accompanied him and that he was roving the camera all over the place. He had not recorded the conversation between him and the

accused persons. On 19/06/2009, none of the girls had quoted the amount. He had met the girls in the Chandani Bar at Dombivli during the period 29/06/2009 to 03/07/2009. He had not given any advance on 03/07/2009. No receipt was given towards booking of any room. He has deposed before the court that he could not recollect as to whether he had given the report to the police in writing. That Nerul Police Station is in the close proximity of Diamond Palace Hotel. They had first met Commissioner of Police, Navi Mumbai who directed them to meet P.I. Shelke of Crime Branch. Crime Branch is adjacent to Office of Commissioner, C.B.D. Mumbai. He has also admitted in the cross-examination that at the time of raid, none of the police from Nerul Police Station were present. Panchanama was completed at Nerul Police Station.

8) P. W. 2 Pradip Mishra is the Panch who was summoned by Police Inspector Dharmadhikari. At the outset, it is to be noted that P.W. 2 is resident of Goregaon (E). He has deposed before the court that when he went to the police station Brian D'Costa, Joy Jadhav and Amrut Jagdeo were present in the police station. One bogus customer was also present. Police had shown him the C.D. It was recorded in Indian Spice Hotel. They were also shown the

transcript of the C.D. Transcript is at Exhibit 50. The C.D. was shown to P.W. 2 on a laptop. There were in all 9 girls. The tainted currency notes were handed over to Rajkumar in the presence of P.W. 2. Rajkumar was carrying a hidden camera attached to his shirt. Thereafter, they had all proceeded to Diamond Palace Hotel. There were 7 to 8 girls in the said building. Rajkumar had inquired with the girls whether they are ready for sexual intercourse. He had also asked them the charges. Accused no. 1 had disclosed that they would have to pay Rs. 1500/-. Rajkumar had paid Rs. 1500/- to accused no. 1. Rajkumar had given Rs. 100/- to a waiter for purchasing condoms and thereafter, Rajkumar had made a phone call to the police and called the police at hotel Diamond Palace. Thereafter, police, along with the Panch had raided room nos. 204 to 206. Police had taken into custody the accused as well as the girls.

9) In the cross-examination, it is admitted that Panch witness was resident of Andheri. He feigned ignorance as to whether office of NGO is situated at Goregaon, Mumbai. He has also admitted in the cross-examination that at the time of incident, he was a student studying in engineering college and the college is situated at Kandivali. His college timings are 9.00 a.m. to 5.00 p.m.

On 03/07/2009, it was not a holiday. It is also admitted that he was not acquainted with Police Inspector Dharmadhikari prior to 03/07/2009. That Police Inspector Dharmadhikari did not even have his contact number. That P. I. Dharmadhikari had called him to act as Panch at Navi Mumbai. According to him, he was not even acquainted with office bearers of IJM. The distance between Goregaon and C.B.D. Belapur is 70 to 80 Kms. When he had reached police station at C.B.D. Belapur, office bearers of NGO and the police were ready to proceed for the raid. That all police officers were introduced by P.I. Dharmadhikari.

10) It is also admitted in the cross-examination that in the C.D., it was not clear as to whether it was shot at Diamond Palace Hotel. The contents of the C.D. Reveal that D'costa and Rajkumar had inquired for accommodation into 2 to 3 hotels, they could not succeed and then they had been to Indian Spice Hotel. It is pertinent to note that there is a candid admission that Rajkumar was seen in the whole shooting. It had transpired in the video shooting that Mr. Rajkumar and D'costa had an occasion to meet those girls at Chandani Palace Bar. That no policeman had accompanied Rajkumar and P.W. 2 to Diamond Palace Hotel. Police had come to the hotel after one and half hour.

Before going to the Diamond Palace Hotel, representatives of IJM had told P.W. 2 about the object of the raid. He has specifically admitted that he was well acquainted with the first informant Brian D'costa. He had informed his parents that he is going to the said place i.e. Diamond Hotel for Panchanama.

11) P.W. 3 Amrutkaur Jagdeo was working as Liasion Officer in IJM since 2005. She is resident of Santacruz. On 03/06/2009, she had accompanied Joy Jadhav, Brian D'costa and Rajkumar Tak to Crime Brach, Navi Mumbai. P.I. Shelke was present in the office of Crime Branch. Brian D'costa had given some information to the police in writing and the police had called upon two Panch witnesses. Rajkumar Tak had produced the C.D. before the police. They had seen the C.D. on the laptop. The transcript was taken under the Panchanama. On the basis of the report given by Brian D'costa and Rajkumar, police had come to the conclusion that accused nos. 1 to 3 were indulging into human trafficking ad therefore, had called upon A.C.P. Chalke. A.C.P. Chalke has directed the police to take action against the accused. Her deposition is in consonance with P.W. 2.

12) It is admitted by her in the cross-examination that there used to be follow up of their work at least once in a week. She has admitted that Pradip

Mishra (P.W.2) was working with the Organization i.e. IJM. That according to her, Rajkumar was not serving with the Organization at the time of recording of her evidence. She has also admitted that hidden camera used by Rajkumar was the property of the Organization and not given by the police. The said camera was not seized under the Panchanama. That there is no documentary evidence to show that C.D. was prepared from the hidden camera used by Rajkumar. Two weeks prior to the incident, she was aware of the follow up taken by Brian D'costa and Rajkumar. She had seen the C.D. and had also read the transcript before handing over the same to the police. It is also admitted that Panchanama does not bear the signature of A.C.P. Chalke and P.I. Shelke and that they had come to the spot after the raid. At the time of preparing the sai634d Panchanama, both officers were not present. She was acquainted with Mr. Dharmadhikari. He was not in-charge of any police station. It is also admitted that on 20/07/2009, the hidden camera and the transcript was not given to the police but it was given on 03/07/2009. She has admitted that the Head Quarter of the Organization is Santacruz, Mumbai and before proceeding to Nerul Police Station, they had assembled at Santacruz. They had been to the police station the vehicle which was owned by IJM. It is

specifically admitted that Rajkumar Tak was not chosen by the police to act as bogus customer but was presented by NGO to act as bogus customer. Panchanamas were prepared at Nerul Police Station. In fact, he had tapped the accused and prepared the C.D. prior to lodging of F.I.R.

13) P.W. 4 Jaona Shaikh is the victim who was allegedly rescued in the said raid. She has deposed before the court that she is original resident of Kolkata and had come to Thane three months prior to incident along with her brother-in-law Abdul Hamid Shaikh. That the accused nos. 2 & 3 had taken her to Diamond Lodge, Nerul for the purpose of prostitution. In the cross-examination she has admitted that her real name is Bakul Rehman Shaikh. That she is not known by the name of Johna. She has disclosed her age to the police as 18 years. She had given the false name as she was frightened. She has admitted in the cross-examination that she was acquainted with Dipak and Raj prior to six months of the incident when she was residing at Shirwane. She did not know any other language except Bengali.

14) On 03/07/2009, police had also accosted her sister and she had disclosed her name as Kutul. She was knowing the other 16 girls. She has further stated that she had not gone to hotel Diamond Palace for the purpose

of prostitution but she had disclosed the same as she was compelled to say so by the police. It is pertinent to note that witness has not been declared hostile.

15) P.W. 5 Anjali Khan was also a victim who was rescued in the said raid. She is also original resident of Kolkata. She has deposed before the court that she was brought to hotel Diamond Palace by Deepak & Raj for the purpose of prostitution. In the cross-examination she has stated that Sapna had brought her from Kolkata for household work and when she came to Bombay, she was compelled to work as prostitute and that she was indulging into prostitution in Jui Nagar. She was acquainted with P.W. 4. She has also admitted that on 29/06/2009, she had been to Indian Spice Hotel. She has denied to have stated Rajkumar that she would charge Rs. 1,000/-. That she was accompanying Sapna on request. She has denied that she had any conversation with Rajkumar. Sapna had not accompanied her to Diamond Palace. That her statement was not read over to her by the police and therefore she had no knowledge as to what was recorded by the police. There was no person in the police station who was acquainted with the Bengali language, except the other girls. When she was taken into custody, she was sent to rescue foundation where she was directed/compelled to depose before the court as per the

statement recorded by the police. She has also not been declared hostile.

16) P.W. 6 Avinash Dharmadhikari was officiating as P.I. at Navi Mumbai Crime Branch. He has deposed before the court that on 03/07/2009 a representative of IJM approached senior P.I. Shelke and had passed on the information about the prostitution run by pimps in Navi Mumbai area. That representatives of the said Organization had informed him that they had recorded shooting by means of a spy camera. In the presence of the Panchas, the C.D. and the transcript were taken on record. According to him, after due verification, one bogus customer by name Rajkumar Tak was called. He was given tainted notes and thereafter it was decided to conduct a raid. In the cross-examination, he has deposed that he was aware of the mandatory provisions of Immoral Traffic (Prevention) Act, 1956 and that he was working under Senior P.I. Shelke. He has feigned ignorance as to whether Rajkumar Tak was the office bearer of the IJM. He had not recorded the statement of Rajkumar on 03/07/2009 and he had not called Raj to act as bogus customer but he was called by P.I. Shelke. It is admitted that in the complaint itself, the first information i.e. Brian D'costa had categorically said that Rajkumar Tak is his colleague. He has also admitted that F.I.R. was lodged after preparation of

the Panchanama. It is admitted that Superior Officer had not signed on the F.I.R. as well as the Panchanama which is at Exhibit 50. it is also admitted that the office bearers of the IJM had not disclosed to him the place where they were to proceed for raid.

17) It is admitted that at the time of raid, police were standing at the distance of one and half to 2 Kms from Diamond Palace and after the raid, police staff had come along with senior P.I. and A.C.P. He had met the panchas in one function and therefore he was knowing them. He was having their cellphone numbers and therefore had called them. It is also admitted that Panch Jyoti Sunil is the resident of Andheri whereas panch witness Pradip Mishra was resident of Goregaon.

18) P.W. 7 Dr. Shailesh Mohite was attached to Nair Hospital. On the basis of the letter dated 06/07/2009 issued by Judicial Magistrate First Class, Vashi, Navi Mumbai he had examined all the victim girls on 16/07/2009. He had then forwarded the letter on table showing results of age verification of the victim girls sent for medical examination. It had revealed that three girls were minor. One victim was pregnant. That Dr. Swati Sonawane, his colleague has examined the victim girls along with him. They had carried out ossification

test. He had not conducted biological test of Sherina who was found to be pregnant by 6 weeks. There was no symptoms of rape on the victim girls. All the victim girls were well built and nourished.

19) P.W. 8 Vilas Suryavanshi was attached to Nerul C.I.D. as P.I. Investigation was entrusted with him. He had sent the victim girls to Municipal Hospital for medical examination. He had also recorded the statements of the victim girls. He had added offence punishable under section 366 (c) & 372 of Indian Penal Code and had filed charge-sheet against the accused on 17/08/2009. It is admitted in the cross-examination that he was not in-charge of Nerul Police Station at the relevant time, neither he was in-charge P.I. of Crime Branch. He had not seized any receipt regarding the booking of the room in the hotel by Brian and Rajkumar. He had not seized the register from the lodge to verify as to whether the rooms were booked in their rooms. He has given evasive answers to most of the questions. He has admitted that 5 girls were sent to Children Home at Bhiwandi and 11 girls were sent to rescue foundation at Chembur. It is admitted in the cross-examination that there was no receipt to show the booking of the room in hotel Diamond Palace.

20) P.W. 9 Maruti Chalke was working as A.C.P. at Turbhe Division. He has deposed before the court that he had received a telephonic call from Police Commissioner Office, Navi Mumbai that Police Inspector Shelke had received some information in respect of prostitution at Nerul and therefore he was directed to remain present at the time of raid. That P.I. Shelke had telephonically given him the detailed information. That he along with P.I. Shelke proceeded to hotel Diamond Palace. They effected the raid. He had taken the accused persons in custody. Thereafter, Brian D'costa had lodged F.I.R. before the concerned police officer. It is elicited in the cross-examination that Commissioner of Police, Navi Mumbai had given oral orders about the information received by him from office bearers of IJM Organization. He had not received any letter in writing from Crime Branch to look into the matter as the Special Police Officer. He has admitted that he had not signed on any Panchanama as Superior Police Officer. He could not give the details of the articles seized.

21) Upon perusal of the evidence adduced by the prosecution, first and foremost glaring aspect that comes to light is that the members of IJM had, on their own persuaded the investigation. The members of the Organization had

taken a video recording of the conversation between Brian D'costa and accused nos. 1 & 2. The camera which was used belonged to the Organization. The transcript of the said C.D. and the photographs were shown to the police prior to the registration of F.I.R., on the basis of which the raid was conducted. According to P.W. 1 Brian D'costa video shooting was recorded by his colleague Rajkumar, however, according to P.W. 2 Pradip Mishra, Rajkumar was also seen in the video which is practically impossible. This would show that the video recording was done by a third person, whose identity is deliberately suppressed by the prosecution witnesses.

22) It is further pertinent to note that complainant or prosecution witnesses had not approached the concerned police station, but had directly approached Commissioner of Police. On the basis of the oral directions of Commissioner of Police, P.I. of Crime Branch had initiated investigation or rather collected the evidence in consonance with the report lodged by IJM. It is further pertinent to note that first informant, decoy witness i.e. bogus customer, Panchas of the raid were all members of the same Organization i.e. IJM. It is as if the entire investigation was conducted at the instance & by office bearers of IJM. P.W. 8 & 9 have specifically admitted that they were not Special

Officers on duty. It is further pertinent to note that the raiding party did not consist of any female officer.

23) In the case of **Delhi Admn V/s. Ram Singh** reported in **A.I.R. 1962 S.C. 63** the Hon'ble Apex Court has considered the provisions of Immoral Traffic (Prevention) Act, 1956, more particularly sections 13, 14, 15 & 16 of the Act. The Hon'ble Apex Court has held that :

“In view of sub-s. (2) of [s. 15](#), the special police officer is required to include at least one woman among the search witnesses.”

24) In the present case, office bearer of IJM Organization who is an interested witness by all means was taken as witness.

Hon'ble Apex Court has further observed:

“According to [s. 13](#) of the Act, there shall be, for each area to be specified by the State Government, a special police officer appointed by or on behalf of that Government for dealing with offences under the Act in that area.”

25) In the present case, it is apparent on the face of the record that there was no Special Police Officer who had received the report at the first instance or had investigated into the offence. No lady police officer was member of the raiding party. This Court after placing reliance upon the Judgment of the

Hon'ble Apex Court in the case of **Jaya Rama Gauda and Ors V/s State of Maharashtra** had in Criminal Appeal No. 596 & 704 of 2009 had held that:

“Special police officer and his assistant police officers are the only persons competent to investigate offences under the Act, and that police officer not appointed as special police officer cannot investigate the offences under the Act, though the offences are cognizable.”

26) In the present case, there has been non compliance of section 100 of Code of Criminal Procedure, 1973. There is utter violation of sub section 4 & 5 of section 100 of Code of Criminal Procedure, 1973 which contemplates as follows:

“100. Persons in charge of closed place to allow search -

(1) -----

(2) -----

(3) -----

(4) *Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.*

(5) *The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a*

search under this section shall be required to attend the Court as a witness of the search unless specifically summoned by it.”

27) In the present case, P.W. 2 Pradip Mishra hails from Goregaon and was specifically summoned by the police to act as Panch. There is evidence on record to indicate that he was also working with the said Organization. That the Panchanamas were neither recorded nor proved in accordance with Law.

28) The most important aspect of the present case is that both the victims i.e. P.W. 4 & 5 have not deposed before the Court that they were being forced into prostitution by the accused persons. That at the relevant time, there was ban on dance bar. It appears that all the victims were voluntarily working as sex workers. The victims were also not well versed with any language, except Bengali. There is nothing on record to indicate that investigating officer or the Court had taken the assistance from any person, who was well versed with Bengali language. Both the victims were not declared hostile by the prosecution and therefore, their evidence needs to be directly taken into consideration. P.W. 4 has specifically deposed before the court that police have recorded the statement of all the girls collectively and obtained her thumb impression on the same. She cannot read and write. She was not

knowing any other language except Bengali. Police had not explained to her the statement in Bengali. She was acquainted with the accused persons prior to 6 months of the incident. Similarly, P.W. 4 has admitted that Rajkumar was not directed to act as bogus customer by police, but IJM Organization had produced him as bogus customer.

29) P.W. 5 has deposed before the court that she was doing prostitution work in Jui Nagar. That there was no person in the police station who knew Bengali language and that when she was in rescue foundation she was directed by office bearers of rescue foundation that she should depose in the Court as per the statement before the police. Hence, prosecution has basically failed to prove that accused persons had induced or coerced the victims to work as prostitutes or rather that they were forced into prostitution by the accused persons. Prosecution has also failed to prove that the raid was conducted in accordance with the mandatory provisions of Immoral Traffic (Prevention) Act, 1956. It is also not proved that accused had either detained the victims or that they were living upon the earnings of the victim or that the victims were confined or that they had forced the victims.

30) In most cases this Court had observed that Social Service Branch

or the Police Department or Special Officer on duty (Appointed under the provisions of PITA) are not conducting the raids or investigations on their own, but it is at the instance of a particular organization i.e. IJM.

31) The said Organization has not approached the police station, but directly to the Commissioner of Police. The role of IJM looms large. It is as if Police Authorities had obliged the NGO which has conducted the raid on its own. The members of the raiding party were not with the Panchas at the time of raid, but were standing at a distance of one and half kilo meters from the scene of offence. The Prosecution has failed to prove that the appellants had forced the victims into prostitution, or that the appellants had taken undue advantage of the victims.

32) In view of the aforesaid discussion, appeal deserves to be allowed. Hence, following order.

ORDER

- (i) Both appeals are allowed.
- (ii) The Judgment and Order passed by the Sessions Judge, Thane in Sessions Case No.362 of 2009 dated 06th January 2014 is hereby quashed and set aside.

- (iii) The appellants are acquitted of all the charges levelled against them.
- (iv) The appellants be released forthwith if not required in any other offence.
- (v) The fine amount if paid be refunded to the appellants.
- (vi) Appeals stand disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.) I