

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

CRI. WRIT PETITION NO. 577 OF 2006

Presley Marian Coelho

... Petitioner.

V/s.

State of Maharashtra & Anr.

... Respondents.

Mrs. Mallika A. Ingale, Advocate for the Petitioner.

Mr. V.B.Konde-Deshmukh, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 27 JANUARY, 2015

P.C. :

1 Heard learned Advocate appearing for the Petitioner and learned additional public prosecutor for the State.

2 The Petitioner is being prosecuted for the offences punishable under sections 341, 344 r/w. 114 of the Indian Penal Code. The victim girls are four sisters who lost their parents at an early age. Four sisters were, therefore, staying at the house of one Mrs. Neema Thakur where they were doing household work. The mother of the victim girls was also working with Neema Thakur. Since the death of the mother, the four girls were employed by Neema Thakur and they were staying in the residential premises of Neema Thakur. The girls were missing from her place w.e.f. 21st August, 2001. The

search resulted in finding all the girls at Child Welfare Society, an institution run by the Government of Maharashtra.

3 The offence of a wrongful confinement was registered against the petitioner on the complaint made by the uncle of the girls. It is stated by the uncle of the girls in his complaint that after the death of his brother and his brother's wife, he was taking care of the children. Since the children were missing, the complainant and his nephew Santosh, the brother of the victim girls, started searching them. They came to know that they were in the custody of one Madhu Kakadya. Therefore, they visited the house of Madhu Kakadya. It is the case of the prosecution that Madhu Kakadya (Bobe) refused to hand over the girls without a writing from Santosh and his uncle. It is alleged that in the meantime, the girls were taken by other accused including the applicant and ultimately they landed at the Remand Home run by the Child Welfare Society at Dongri.

4 I have gone through the FIR and the statements of witnesses including the statement of the eldest sister Savita. None of the statements indicate that the girls were ever confined in the custody of the Petitioner or in any other's custody at the instance of the Petitioner. It is strange to note that the Petitioner has been charge-sheeted for the offences stated herein-above without there being any material against him.

5 I have gone through the affidavit-in-reply filed by the State. Though it is alleged in the affidavit, that the Petitioner is one of the persons who took the girls from the custody of Madhu Kakadya (Bobe), there is no material to this effect in the charge-sheet at all. Even the reply -affidavit does not indicate that there is any such material in the chargesheet. In view thereof, the order passed by the learned additional Chief Metropolitan Magistrate, refusing to discharge the Petitioner is set aside.

6 The Petitioner is discharged of the charges levelled against him which are stated herein above. His bail bond stands cancelled.

7 The order passed by the learned additional Chief Metropolitan Magistrate dated 22nd July, 2005 and the order of the additional Sessions Judge, Mumbai dated 1st December, 2005 in Cri. Revision Application NO. 650 of 2005 are hereby set aside.

8 The writ petition is accordingly allowed. Stay stands vacated. Record and proceedings, if any, be sent back to the trial court.

(JUDGE)

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