

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.548 OF 2016

IN

CRIMINAL APPEAL NO.301 OF 2016

Mohd.Kalim Gulfam Ansari ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.P.R.Dave, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 24th OCTOBER 2016.

P.C.

1 Heard learned counsel for the applicant and learned Additional Public Prosecutor for the respondent/State.

2 Application for original accused No.1 is not pressed as his name is deleted. Learned counsel for the applicant/original accused No.2 has submitted that deleted applicant No.1 is husband of P.W.No.2 the victim girl as set out by prosecution. However, no report is obtained from said victim, but the offence is registered on the basis of complaint lodged by the P.W.No.1, who is working with NGO. By referring to evidence of witnesses on record, it is contended that from the evidence no ingredients of Section 370(2) of the Indian Penal Code (For short, "the IPC") can said to be attracted, as applicant being friend

of husband of victim met him in a room situated at Nagpada area, where they had stayed on their reaching to Mumbai, however, he is falsely implicated as a person alleging to be instrumentee in sale of P.W.No.2-victim girl, who is wife of original accused No.1-Mohd. Mofizul Mohd. Ajedali Sardar, resident of Bangladesh.

3 It is also pointed out that P.W.No.2 the victim has materially improved her version and has thus submitted that since applicant was on bail pending trial, he be released on bail on imposing suitable conditions as there is no sufficient evidence on record establishing his role in the incident, attracting provisions of Section 370(2) of the IPC.

4 Learned Additional Public Prosecutor opposed the application on the ground that there is sufficient evidence, which *prima facie* established the case against the applicant, as he is found instrumental in sale of victim to indulge in prostitution.

5 Perused the impugned Judgment of the learned Additional Sessions Judge, Greater Mumbai vide which applicant is found convicted for the offence punishable under Sections 370(2) read with 34 of the IPC and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month.

6 In nutshell, it appears to be the case of prosecution that P.W.No.2 victim, who is wife of original accused No.1-Mohd. Mofizul

Mohd. Ajedali Sardar, was brought by him from Bangladesh to Calcutta on a false pretext and from there to Mumbai to sell her with the assistance of applicant and are accordingly apprehended in a raid by police. With reference to the case of prosecution, as aforesaid, evidence of P.W.No.1 is that he is working for some NGO since ten years prior to incident and on the day of incident i.e. on 15/05/2015 had received information of sale of one girl to be effected in Room No.5, Marwadi Chawl situated on the ground floor in 14th Lane, Kamathipura, Nagpada, Mumbai, and thus gave this information to police and accordingly in a raid carried out in presence of lady constable and other police staff, applicant along with original accused No.1 and victim, his wife came to be apprehended. Further evidence of P.W.No.1, the complainant is that posing himself as bogus customer he spoke to applicant at the spot and was informed that they are from Kamathipura, and started to deal with sale of female, who was present there and finalized the deal for Rs.30,000/-. He also stated that, at that time, one of his friend was also with him, and has given signal to police, upon which raiding team officials arrived on the spot and apprehended the applicant.

Considering the above piece of evidence of complainant, it is material to note that prosecution has not examined any of the constable, who had accompanied complainant to the spot, where he claims to have found applicant in company of victim and original accused No.1. Similarly, friend of P.W.No.1 is also not examined, who according to this witness was present, and in fact is stated to have given signal to police when complainant by pretending himself as bogus customer has finalized the deal to purchase victim for Rs.30,000/-.

Similarly, it is stated that there is no spot panchanama of room, where above transaction is alleged to have materialized.

7 From further evidence of complainant, it has come on record that the victim girl was unable to understand or speak in Hindi and, therefore, service of one female namely 'Rubi' was taken as 'an interpreter', since she was knowing Bangali, who had inquired with victim and accordingly police had investigated the matter. In spite of this, this Rubi is also not found examined.

8 Evidence of victim is recorded as of P.W.No.2 by video conferencing from Bangladesh. Her evidence is totally silent on the aspect of original accused having been entered into any deal with P.W.No.1 to sell her for Rs.30,000/-. In fact, according to her evidence, after she with her husband – original accused No.1 reached Mumbai by train, they were accompanied by his sister. However, admittedly, no statement of sister of original accused No.1 is recorded, nor she is examined. According to victim, from station she along with her husband went to one place, which was a room where they preferred to stay for the night, and when her husband went to attend the toilet, 4-5 persons along with some ladies came, due to which she screamed, and could not conversed with them for want of knowledge of Hindi language and in the mean time police arrived in the room.

9 Considering the evidence, as aforesaid, *prima facie* no role of applicant is found to be established to attract ingredients of Section 370(2) of the Indian penal Code, while it is the specific case of

applicant that on 15/05/2014 at 11.00 a.m. after he was taken into custody from his house, he is falsely implicated in the present case.

10 Considering the evidence of complainant, and as admittedly no offence is registered on the basis of complaint of victim, but on the report of P.W.No.1 – social worker, and as his evidence, as well as evidence of victim girl do not substantiate that applicant was instrumental in her sale to indulge into prostitution, and as applicant was on bail, pending trial and it is no case of prosecution that while on bail, applicant has misused liberty granted to him, application is liable to be allowed by imposing suitable condition upon applicant. Hence, following order :

- (i) Applicant shall be released on bail on his executing personal bond in the sum of Rs.15,000/- with one surety in like amount.
- (ii) While on bail applicant shall mark his presence with Nagpada Police station once in three months on first day of each such month, pending appeal.
- (iii) Applicant shall submit proof of his address to Nagpada Police Station and update change in address, if any, in future.

(P. N. DESHMUKH J.)