

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.428 OF 2016

IN

CRIMINAL REVISION APPLICATION NO.404 OF 2016

NAZMA ABDUL SATTAR SAYYED

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

AND

CRIMINAL APPLICATION NO.419 OF 2016

IN

CRIMINAL REVISION APPLICATION NO.389 OF 2016

POOJA MAILA THAPA

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Shaikh Zakir Hussain a/w. Mr.M.A.Ansari, Advocate for the Applicants.

Mr.A.R.Patil, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 20th AUGUST 2016.

P.C. :

1 Heard. Both these applications are arising from the same crime and as such are heard together and disposed of by this common

order. Both the applicants were tried before the learned Magistrate for the offences punishable under Section 344, 346, 366 read with Section 34 of IPC along with Sections 3, 4, 5, 6 and 7 of Immoral Traffic Prevention Act. Accused no.1 died pending trial while applicants came to be tried and are convicted for the offences punishable under Sections 3 and 4 of Immoral Traffic Prevention Act and are sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for 15 days, and under Section 5 of said Act are sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/-, in default, simple imprisonment for 15 days, and for offence punishable under Section 7 of said Act and are sentenced to suffer simple imprisonment for 2 months, while applicants are acquitted for the offences punishable under Sections 344 and 346 of IPC and Section 6 of Immoral Traffic Prevention Act.

2 Learned counsel for applicants has referred to the observations of the learned trial court as well as that of the learned Sessions court, and has submitted that there is no evidence on record to establish involvement of applicants. Infact, it is contended that learned courts below failed to hold that no provisions of Section 6 of Indian Evidence Act could be attracted in the present case, as there are no

spontaneous statements made by either of the victim girls who are alleged to be found at the spot during the raid. For this purpose, learned counsel for applicant has relied upon case of **Pratap Singh and Another vs. State of Madhya Pradesh** reported in **1971 CRI.L.J. 172** and has thus contended that as there is no other evidence of independent witnesses, applications be allowed by imposing suitable conditions.

3 Learned APP opposed the applications on the ground that apart from present crime both the applicants are involved in similar crimes registered against them. To counter this submission, learned counsel for applicants has placed on record copies of bail orders of applicants to establish that they are released on bail by the learned Sessions court in said crimes.

4 Having considered facts as aforesaid, and with reference to case of applicants, with regards to application of Section 6 of Indian Evidence Act, on perusal of evidence of complainant it is prima facie found that no statements were made by the victim girls, either to the raiding team members or to police officers, but what is noted is that after the raid, they were inquired by police officers on the spot and

gave reply to questions put to them by police.

5 Considering evidence of complainant since it is found that none of the girls who came to be rescued during the raid had made any statement on their own, but are only found to have replied to questions put to them by the members of raiding team, law referred by applicants can usefully be relied upon, wherein with reference to provisions of Section 6 of Indian Evidence Act, in paragraph 11 of the judgment, it is observed thus :

“The principle is that it should be so intimately connected with the fact in issue as to be a spontaneous utterance inspired by the excitement of the occasion or a spontaneous reaction thereof, there being no opportunity for deliberately fabricating the statement . In other words the statement which is a part of *res gestae* does not narrate a past event, but it is the event itself speaking through a person thus excluding the possibility of any design behind it.”

6 For the reasons as aforesaid and since from the copies of bail orders of the learned Sessions court tendered at the bar, it is found that applicants are already released on bail in the offences which are

subsequently registered against them and as learned counsel for applicants to a specific query, makes a statement that no minor girls were found at the time of raid, applications are liable to be allowed by suspending substantive sentences imposed upon the applicants and to be released on bail as per order below :

- i) Applicant Nazma Abdul Sattar Sayyed and applicant Pooja Maila Thapa shall be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each, with one surety each, in like amount.
- ii) Applicants shall furnish their permanent addresses and mark their presence with Nagpada Police Station on 15th day of each month pending revision, and shall not indulge in similar acts.
- iii) In the event applicants are found involved in similar acts in future, this order shall be liable to be cancelled.

(P. N. DESHMUKH, J.)