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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : 22nd MARCH, 2016

+ **CRL.A. 650/2003**

SEEMA Appellant

Through : Mr. S. Sarkar, Advocate.

versus

THE STATE Respondent

Through : Mr. Vinod Diwakar, APP.

+ **CRL.A. 655/2003**

MADHU Appellant

Through : Mr. S. Sarkar, Advocate.

versus

THE STATE (NCT OF DELHI) Respondent

Through : Mr. Vinod Diwakar, APP.

+ **CRL.A. 382/2004 & Crl. M (B) Nos. 1220/2005, 1412/2005 & 1517/2005**

SEEMA Appellant

Through : Mr. S. Sarkar, Advocate.

versus

THE STATE Respondent

Through : Mr. Vinod Diwakar, APP.

AND

+ **CRL.A. 505/2004**

MADHU

..... Appellant

Through : Mr. S. Sarkar, Advocate.

versus

STATE

..... Respondent

Through : Mr. Vinod Diwakar, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. Seema and Madhu (the appellants) were arrested in case FIR No.282/2001 under Sections 363/368/376/342/323/109/34 IPC and Sections 3, 4, 5 & 6 ITP Act PS Kamla Market. Some minor girls recovered from Kothas at G.B.Road in a police raid were lodged in Nirmal Chhaya. They wanted to make statements U/S 13 JJ Act on 07.07.2001. The Investigating Officer recorded statement of victim 'X'(changed name) and lodged FIR. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against both the appellants. The prosecution examined twenty witnesses to establish its case. In 313 Cr.P.C. statements, the accused persons denied their involvement in the crime and pleaded false implication. No evidence in defence was led.

After considering the rival contentions of the parties and on appreciation of the evidence, the Trial Court vide impugned judgment dated 11.08.2003 in Sessions Case No.143/2001 convicted the appellants – Seema and Madhu for committing offences under Sections 373/368 read with Section 366 IPC. By an order dated 19.08.2003, Seema was sentenced to undergo RI for seven years with fine ₹5,000/- under Section 368 read with Section 366 IPC and RI for eight years with fine ₹5,000/- under Section 373 IPC. Both the sentences were to operate concurrently. Madhu was sentenced to undergo RI for seven years with fine ₹5,000/- under Section 368 read with Section 366 IPC. Being aggrieved and dissatisfied, Crl.A.650/2003 and Crl.A.655/2003 have been preferred by them.

2. Seema and Madhu were also arrested by the police of PS Kamla Market in case FIR No.258/2001 for committing offences under Sections 363/368/372/373/376/342/323/506/109/34 IPC and Sections 3, 4, 5 & 6 ITP Act. On 06.07.2001, a raid was conducted at Kotha No.68, 2nd floor, G.B.Road, Delhi at around 03.30 p.m. Two girls ‘Y’ (changed name) and ‘Z’ (changed name) were recovered from there. After recording Y’s statement, the Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts

were recorded. Geeta and Ramprashad were also apprehended and arrested. Upon completion of the investigation, a charge-sheet was filed against all of them in the Court. During trial, Ramprashad and Geeta absconded and were declared Proclaimed Offenders. The prosecution examined various witnesses to establish its case. In 313 Cr.P.C. statements, the accused persons denied their involvement in the crime and claimed false implication. Finally, the trial resulted in their conviction. By the impugned judgment dated 06.05.2004 in Sessions Case No.26/01, they were convicted under Sections 373/342/506/120B IPC and were acquitted of the offence under Sections 323 IPC and under Sections 3, 4, 5 & 6 ITP Act. By an order dated 14.05.2004, they were sentenced to undergo RI for ten years with fine ₹10,000/- each under Section 373 IPC, RI for one year with fine ₹500/- each under Section 342 IPC and RI for one year with fine ₹500/- each under Section 506 IPC. The substantive sentences were to operate concurrently. Being aggrieved and dissatisfied, Crl.A.382/2004 and Crl.A.505/2004 have been preferred. It is pertinent to note that State did not challenge their acquittal in certain offences mentioned previously.

3. During the course of arguments in the above appeals, learned counsel for the appellants, on instructions, stated at Bar that the appellants
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have opted not to challenge their conviction on merits. Prayer has been made to modify the Sentence Order and to release them for the period already undergone by them. Learned APP has no objection to consider the mitigating circumstances to take lenient view.

4. Since the appellants have voluntarily opted to accept the findings of the Trial Court on conviction in both the FIR Nos.282/2001 and 258/2001 in the presence of overwhelming evidence, their convictions are affirmed.

5. Vide order dated 08.08.2006 in CrI.A.382/2004, this Court, while granting benefit under Section 427 Cr.P.C. to the appellant Seema, directed that the sentence awarded to her in case vide FIR No.258/2001 shall run concurrently with the sentence awarded to her in case FIR No.282/2001 of PS Kamla Market.

6. Vide order dated 27.07.2006 in CrI.A.505/2004 benefit under Section 427 Cr.P.C. was extended to the appellant Madhu and it was directed that sentences in both the FIR Nos.282/2001 and 258/2001 PS Kamla Market shall run concurrently.

7. Order dated 27.07.2006 in CrI.A.505/2004 reflects that the appellant Madhu has already suffered imprisonment of five years and ten months including remissions out of total imprisonment of ten years

awarded to her in that case. Accordingly, the substantive sentence of the appellant Madhu was suspended on her furnishing bail bonds in the sum of ₹20,000/- with two sureties in the like amount to the satisfaction of the Trial Court. She was further directed not to visit the Red Light area in G.B.Road. She was further directed to appear before the SHO, Police Station Kamla Market in the first week of every month and to furnish her latest residential address.

8. Vide order dated 22.08.2006 in CrI.A.382/2004 the substantive sentence of the appellant Seema was suspended on her furnishing bail bonds in the sum of ₹20,000/- with two sureties in the like amount. She was also directed not to visit the Red Light area in G.B.Road and to report to SHO, Police Station Kamla Market in the first week of every month and to furnish her latest residential address. It was noticed that she had already suffered imprisonment for about five years including remissions out of total imprisonment for ten years.

9. Sentence order dated 19.08.2003 in Sessions Case No.143/01 arising out of FIR No.282/01 PS Kamla Market records that Seema was aged around 55 years. Both her ovaries were not functioning and she was undergoing treatment. It further records that the appellant Seema had a son aged around 18 years. Appeal file records that interim bail was

granted to Seema on various occasions to allow her to get treatment on various occasions. She had undergone surgery also. After her suspension of sentence, nothing has emerged on record if her involvement in any other similar case was found / noticed. The appellant has suffered ordeal / agony of trial / appeal for about more than 15 years. She is not a previous convict. No useful purpose will be served to send her in custody to serve out the remaining period of substantive sentence. Considering all the mitigating circumstances and the appellant's age, the period already undergone by her in both the cases shall be taken as her substantive sentence.

10. Regarding appellant Madhu, Sentence Order dated 19.08.2003 records that she was aged around 37 years. She had a daughter aged around 8 years who was in the custody of her friend Sunita to whom she had come to visit from Nepal. It further records that a query was made from convict Madhu if she was interested to leave her daughter with any relative or NGO or some other institution run by the Department of Social Welfare, Delhi Administration. She informed that she would not like to handover the custody of her daughter to anyone else as she was being looked after nicely by her friend. After her suspension of sentence, nothing has emerged if the appellant Madhu indulged in any such activity

or was involved in any such criminal case. She is not a previous convict and is to look after her daughter. She has also suffered ordeal / agony of trial / appeal for around 15 years.

11. Initially, both Seema and Madhu were victims of circumstances and were forced to indulge in prostitution.

12. Considering the mitigating circumstances, I am of the view that no useful purpose will be served to direct the appellant Seema to undergo the remaining period of substantive sentence in custody. Accordingly, substantive sentence undergone by her in both the cases shall be treated as substantive sentence.

13. Of course, the appellants shall deposit the fine imposed by the Trial Court in the impugned orders if remained unpaid so far. In addition, they shall deposit ₹50,000/- each within fifteen days in the trial court to be paid to the victims. ₹ 25,000/- each shall be given as compensation to victims, 'Y' and 'Z', in case FIR No.258/2001 and ₹50,000/- shall be paid to victims 'R', 'X' and 'S' in equal proportions in case FIR No.282/2001. Trial Court shall disburse this amount to the victims after due notice. If the victims or their legal heirs are untraceable, the amount shall be deposited with Delhi State

Legal Services Authority to be utilized for the welfare of any such victim(s).

14. The appeals stand disposed of in the above terms. Pending applications also stand disposed of.

15. Trial Court record be sent back forthwith with the copy of the order in sealed cover as it contains names of victims whose identity is not to be disclosed. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MARCH 22, 2016 / *tr*