

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

Judgment Reserved on: May 19, 2016

% *Judgment Delivered on: June 01, 2016*

+ **Crl.A. 1026/2013**

HASEENA

..... Appellant

Represented by: Mr. K.K. Sud, Sr. Adv. with
Mr. C.P. Nautiyal, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Ravi Nayak, APP for the
State with SI Padam Singh, PS
Kamla Market.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Vide the judgment dated June 05, 2013 Haseena has been convicted for the offences punishable under Sections 3, 5(1)(d) and 6 of the Immoral Traffic (Prevention) Act, 1956 (in short 'ITP Act') and for offence punishable under Section 174A IPC. She has been directed to undergo rigorous imprisonment for 3 years and fine of ₹2,000/- for offence punishable under Section 3 ITP Act, rigorous imprisonment for 10 years and fine of ₹2,000/- for offence punishable under Section 5(1) ITP Act, rigorous imprisonment for 10 years and fine of ₹10,000/- for offence punishable under Section 6 ITP Act and rigorous imprisonment for 3 years and fine of ₹6000/- for offence punishable under Section 174A IPC.

2. FIR No.136/2009 under Sections 365/368/372/373/376/109/506/34 IPC and Sections 3,4,5 and 6 ITP Act was registered at PS Kamla Market on November 09, 2009 after a raid was conducted by the police on the

complaint of 'M' who stated that she was a resident of Darjeeling, West Bengal, belonging to a poor family. She had studied upto 7th standard. Her father remarried whereafter her mother also remarried due to which she was very disturbed. One day, she met a lady in the market who started speaking to her and stated that she would get 'M', a good employment in Delhi. Allured by her talks, she came to Delhi, along with that lady, in the month of March. The lady assured her that she would get her an employment in garment shop but the lady brought her to GB Road, Kotha No.57, First Floor left side. There were number of girls, of which Rajni told her that she had bought her from the said lady and 'M' will have to do prostitution. 'M' understood that the said lady had sold her after alluring her. One lady named Haseena was incharge of the Kotha. Rajni forced 'M' into prostitution, contrary to her wishes and when she refused, Rajni used to beat her and take all her money. 'M' was not permitted to go out and when police used to come for checking, 'M' used to be hidden inside. 'M' was very upset and wanted to go to her house. When the raiding team came to the Kotha, she told them the entire story. She sought legal action against all who had put her into prostitution contrary to her wishes i.e. Haseena, Rajni and the lady who brought her to the Kotha.

3. 'M' was medically examined on the same date and her MLC Ex.PW3/A was prepared by Dr. Neha Gupta which was proved by Dr. Annika Jindal PW-3. As per the MLC, on examination hymen was found torn besides large area of erythema and excoriation seen on entire labia majora and labia minora, small papillomatous growth on posterior vulva seen. Papillomatous growth was also seen below the urethra extending to anterior vaginal wall.

4. Statement of 'M' was recorded under Section 164 Cr.PC by the learned Metropolitan Magistrate who appeared as PW-6 and proved the proceedings and the statement.

5. During the course of trial, since co-accused Rajni absconded, she was declared as proclaimed offender vide order dated January 16, 2012 and the trial proceeded against Haseena who was convicted for offences noted above.

6. Learned counsel for the appellant Haseena challenging the conviction states that in the rukka the only allegation against Haseena is that she was incharge of the Kotha. Despite there being no allegation of forcing 'M' into prostitution or living on the earning of prostitution, the learned Trial Court came to the conclusion on the basis of sweeping statements. Statement of 'M' recorded after due counselling sessions cannot be said to be her voluntary statement. Even in Court, 'M' was reluctant to name Haseena however on confrontation she was forced to name Haseena. Even the investigating officer did not name Haseena initially. Moreover, Constable (in short 'Ct.') Tajender PW-5 though pointed out towards the Haseena did not state anything against her. Further he had visited Kotha No.57, First Floor, Left Side 2-3 days prior to the incident for routine check up, when no complaint was made by any girl. Relying upon the decision of this Court in the decision reported as 2002(3) JCC 1842 Mumtaj @ Behri Vs. The State (Govt. of NCT of Delhi), it is contended that the ingredients of Section 3 ITP Act are not fulfilled. Thus, no order of conviction for offences punishable under Sections 5 and 6 ITP Act could be passed. Learned Trial Court failed to notice the contradictions and improvements in the evidence and based the conviction only on the testimony in examination-in-chief. The evidence of

Dr. Annika Jindal PW-3 cannot be treated as an expert evidence and the MLC also cannot be held to be proved in accordance with law. Statement of investigating officer, Inspector Surenderjeet Kaur PW-12 is hearsay and thus not admissible in evidence. Since Haseena had undergone operation and was not fleeing from justice, offence under Section 174A is not made out. Before convicting the appellant for offence punishable under Sections 174A, provisions of Sections 82 and 83 Cr.PC have not been followed and the Court was not competent to take cognizance for the said offence in violation of Section 195 Cr.PC.

7. Learned APP for the State on the other hand refers to the definition of 'brothel' as provided under Section 2(a) of the ITP Act and states that from the evidence it is proved that Haseena was running a brothel. Further 'M' in her evidence clearly stated that both Haseena and Rajni had forced her into the prostitution against her wishes. The MLC of 'M' shows that she was subjected to sexual intercourse and 'M' being a minor, presumption under Section 6(2A) of ITP Act is required to be raised which the appellant has failed to discharge. As per the guidelines framed by the Supreme Court and this Court, the investigating agency is duty bound to call the counsellors to counsel the victims of rape and trafficking and provide them assistance in the proceedings. Thus practice directions as per the judgments were followed by the investigating agency. The evidence of 'M' is sufficient to convict the appellant. Hence the appeal be dismissed.

8. Before Court 'M' deposed in sync with her statement on the basis of which FIR was registered. In relation to Haseena, the deposition of 'M' in the Court was as under:-

"Besides Rajni, there was another lady namely Hasina who was

the Incharge of all the girls there. She used to also force the girls including me to do prostitution and upon refusal, she used to abuse and torture us. I can identify both the accused persons out of which accused Hasina is present today in the Court (correctly identified). Accused Rajni is not present today in the Court (exempted from personal appearance today and her identify is not disputed).”

9. ‘M’ also deposed that on November 09, 2009 when a raid was conducted she was rescued and she narrated the entire story to police. Prior to November 09, 2009 also police had raided the Kotha but accused persons used to hide all the girls including ‘M’. She identified her signatures on the rukka, her consent for medical examination, recording of her statement under Section 164 Cr.PC and the arrest memos prepared in her presence.

10. The grievance of learned counsel for the appellant is that the learned Trial Court failed to take note of the cross-examination of ‘M’. ‘M’ has named Haseena in the rukka on the basis of which FIR was registered though she did not name her in the statement recorded under Section 164 Cr.PC Ex.PW-1/B. In the rukka besides stating that Haseena was incharge of Kotha, ‘M’ sought legal action against all the three ladies including Haseena who forced her into prostitution contrary to her wishes. The entire confrontation by learned counsel for the appellant in cross-examination is on the basis of the statement recorded under Section 164 Cr.PC i.e. Ex.PW1/B and not Ex.PW-1/A the statement on the basis of which FIR was registered. As noted above, there are clear allegations against Haseena of being incharge of the Kotha and forcing ‘M’ into prostitution and seeking legal action which she has reiterated in the deposition before the Court. Thus, it

cannot be said that there are material improvement and on that count Haseena is entitled to be acquitted.

11. In view of the testimony of M, ingredients of offence punishable under Section 3 ITP Act have been proved beyond reasonable doubt.

12. 'M' deposed that her date of birth was December 25, 1992. She was brought to Kotha No.57, First Floor Left Side G.B. Road in March, 2009 whereafter she was forced into prostitution. Thus, at the time of the offence, 'M' was above 16 years of age and below 18 years, therefore a minor in terms of Section 2(cb) of ITP Act. Further Dr. Uma K. Senior Medical Officer, DDU Hospital PW-4 and Dr. Aruna Singh, Medical Officer, DDU Hospital PW-9 who examined 'M' gave their findings vide Ex.PW-4/A opining the age of 'M' between 15-16 years. Even taking age of 'M' as 16 years, 'M' was a minor when she was procured, induced and forced into prostitution at the brothel, the minimum punishment for which is 7 years which may not exceed 14 years. From the MLC of 'M' Ex.PW-2/A it has been proved that 'M' was subjected to sexual abuse and 'M' being a minor, presumption under Section 6(2A) is required to be drawn up that she was exploited for commercial purposes. The appellant has failed to rebut the said presumption.

13. The decision of this Court in Mumtaj @ Behri (supra) is not applicable to the facts of the present case. In the present case, 'M' has specifically stated that not only Haseena was incharge of the Kotha, she also forced 'M' to indulge into prostitution contrary to her wishes.

14. As regards, offence punishable under Section 174A IPC is concerned, HC Mohan Singh PW-7 deposed qua execution of process under Section 82 Cr.PC against Haseena and since Haseena failed to appear, she was declared

a proclaimed offender. Incriminating evidence in this regard was also put to Haseena in the statement recorded under Section 313 Cr.PC so as to render an explanation to which she stated that the same was a matter of record and she did not dispute that she was present at Kotha No.56 on 24.11.2012 from where she was arrested . Though the plea of being unwell and since nobody in Delhi was there to look after her she had gone to her native village has been taken however no medical document has been proved in evidence.

15. In view of the discussion aforesaid, I find no error in the impugned judgment of conviction and order on sentence.

16. The appeal is dismissed. The appellant will undergo the remaining sentence.

17. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

18. TCR be returned.

(MUKTA GUPTA)
JUDGE

JUNE 01, 2016
‘v mittal’