

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

**CRIMINAL REVISION APPLICATION NO.366 OF 2017
WITH
CRIMINAL APPLICATION NO.346 OF 2017**

Poonam Balbir Singh .. Applicant.

Vs.

The State of Maharashtra .. Respondent.

Mr.Prabhanjay R. Dave for the Applicant.

Ms.P.N. Dabholkar APP for the Respondent.

CORAM : A. K. MENON, J.

DATED : 1ST AUGUST, 2017

P.C. .

1. By this revision application, the applicant has sought to challenge the order dated 30th June, 2017 passed by the Court of Sessions in Criminal Appeal No.306 of 2016 whereby the appeal filed by the accused nos.1 and 2 was allowed and the conviction of present applicant under Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 was upheld. The accused has since been taken into custody.

2. Mr.Dave, learned counsel for the applicant submitted that the order of conviction was not justified. The case against the present applicant proceeds on the basis that the applicant was found to be running a brothel at the location Building No.417, Noor Mohd. Beg Mohd. Chawl behind Congress House and were enlisting minor girls and getting them involved in a prostitution racket. It

transpires that on 1st February, 2008 the Senior Inspector of Police, Anti Trafficking Cell, Social Service Branch, CB CID received information about the applicant and other accused running a brothel at the said address and a raid was arranged wherein three bogus customers and four panchas were arranged. The decoy customers were given Rs.2,000/- for engaging girls maintained at the brothel. The record indicates that when the police party raided brothel the applicant was also found and the police recovered punter notes of Rs.2,000/- from the accused persons. The girls engaged in prostitution were rescued. Pre-raid and post-raid panchnamas were reportedly prepared and after completion of the investigation the charge sheet under Sections, 3, 4, 5, (1) (ii), 7 (1)(b)(1A) of the Immoral Traffic Prevention Act was filed.

3. The accused pleaded not guilty. The prosecution examined five witnesses, the police sub inspector and decoy customers. Ultimately, accused nos.1 and 2 were acquitted and present applicant was convicted since direct evidence was found against the applicant. The impugned order records that the prosecution has examined decoy customers Rajesh Bafna and he deposed that he paid Rs.2,000/- to the applicant for providing a girl and thereafter he signaled to the police from within the premises. The Court found that veracity of his evidence could not be doubted.

4. Mr.Dave pointed out that these are all witnesses who are used as decoy customers and panchas regularly by the police and the use of these persons was not legitimate. Considering the fact that the requirements of section

provide a procedure for conducting raids with search warrant. Section 13 provides that raids shall be conducted by the special police officer not below the rank of an Inspector of Police and accompanied by requisite number of panchas including responsible people of the locality.

5. In the instant case it was submitted that none of the persons who acted as panchas are from locality and their profile did not comply with the requirements of law. Mr.Dave further submitted that the Investigating Officer was not even examined in the present case and therefore the entire raid was bad in law and conviction based on such a raid is not sustainable. He relied upon a decision and the ratio in case of *Jaya Rama Gauda Vs. the State of Maharashtra 2013 ALL MR (Cri.) 675* and submitted that the requirements of law were not met. He further submitted that the applicant was the mother of minor child, 10 years old daughter, who is paralytic and require constant care. There are no other family members to look after the child and hence the applicant's presence is required. He therefore submitted that the applicant be released on bail.

6. Mr.Dave submitted that the respondent had already undergone the sentence for one and half months and therefore this is a fit case that the applicant should be released on bail especially considering the condition of the child. It is pertinent therefore to mention that before the Sessions Court this contention was not at all taken although the challenge was to conviction of the present applicant. No evidence has been led in this respect. Mr.Dave further

submitted that the prosecution had not examined any neighbors where the offence is alleged to have taken place and this he submitted was blot in the prosecution case.

7. Mr.Dave further relied upon the following judgments :

- (i) Delhi Administration Vs. Ram Singh AIR 1962 SC 63;
- (ii) Mumtaj alias Behri Vs. The State (Govt. of New Delhi) 2003 Cri.LJ. 533;
- (iii) C.P. Raju Vs. State of State of Kerala 2014 Cri.LJ. 2936 and
- (iv) Rupesh Babu Thapa @ Hamaliya Arjun Thapa vs. The State of Maharashtra Criminal Appeal No.345 of 2014 dated 6th June, 2016.

He submitted that the officer concerned who was Incharge had not deposed. Furthermore, a case under ITPA cannot be investigated by the Police Sub Inspector and shall be investigated by specially appointed Police Officer, who is competent to investigate it and in the instant case the Investigating Officer was not specially appointed officer. He also relied upon the judgment of Mumtaj (supra) and submitted that raid in that case was conducted by the police Sub-Inspector, who was not authorised and hence the trial was vitiated.

8. The application was opposed by the public prosecutor on the ground that all requirements of law were being complied with and there is no occasion for the applicant to find fault with the process followed during the raid and all requirements under Section 13 were complied. She submitted that Section 13 provides for delegation of powers and the police inspector was entitled to

seek help of his subordinate as provided under Section 13(2A). It is therefore submitted that the revision application is liable to be rejected.

9. The learned APP also referred to the evidence of Papat Chavan, he was witness no.1 (P.W.1) and police Sub Inspector on the Social Services Branch, who deposed that he received a call from the Investigating Officer and thereafter at his request along with Police Inspector Mane and lady police constable and four panchas in his capacity as an officer under Immoral Traffic Act bogus customers were engaged and Investigating Officer gave Rs.2,000/- each to the decoy customers. After receiving the pre-determined signal, a raid was conducted where panchas and decoy customers were present there. The Investigating Officer then sent a lady constable who made inquiries with the girls found in the room along with decoy customers, who informed the lady constable that her name was Hema Singh. The currency notes found from person of the applicant and notes that were given by the Investigating Officer to the decoy customers were the same. The aforesaid witnesses were cross examined.

10. Apropos the argument of Mr.Dave that none of neighbours had been examined in the case, I am of the view that the observation of the Sessions Court to the effect that neighbors may be hesitant to get involved in case of this nature and also may not be aware of the premises being raided is justifiable and cannot be faulted.

11. I have perused the provisions of the Act and found that under Section 13 of the Act a police officer is required to be appointed on behalf of the Government for dealing with offences under ITPA. Furthermore, under Section 13(3) the Special Police Officer of the area can be assisted by such number of subordinate officers as the State Government may deem fit. In this behalf the evidence and record indicates that P.W.1 Popat Chavan, who was attached to Social Service Branch as a police Sub-Inspector was called by Senior P.I. Kazi and told that he was Special Officer under ITPA. He authorised P.W.1 under Act in the matter and conducted raid along with raiding party. He also deposed that a lady constable had accompanied during the raid when the applicant was apprehended. The cross examination of the said witness has not succeeded in shaking credibility of the witness's deposition in chief. In fact there is no challenge to his authority to conduct raid and being part of raiding party. In the circumstances there is no substance in the submission that the trial of the applicant is vitiated on that ground.

12. The contention that the applicant had a child who needed constant care was not taken up before the trial Court or atleast before the Sessions Court at the time of applying for bail. Assuming this contention to be correct I examined the documents annexed, photographs of child at Page 45 and 46 and the accompanying page is indicative of OPD patient record book and certain clinical notes contains alterations. There is nothing to show link with the

present applicant or the child. Even copy of the record book is dated 19th May, 2016 and is said to be issued by Dr.R.C. Mishra and shows hospital name as Rainbow Hospital of Agra. The clinical notes are of the same date. The first three entries are of clinical notes dated 19th May 2016, 26th June 2016, 1st December 2016 and thereafter 10th May 2017. Mr.Dave also relied upon the order of this Court in Criminal Application No.400 of 2015 in Revision Application No.461 of 2015 wherein on similar grounds of conviction under Immoral Traffic Act, the accused was granted bail in view of the fact that the accused was tried for similar offences and the bail had been granted in the said case.

13. Even assuming in favour of the applicant that she had a child in need of care, this Court had directed the learned APP to make inquiry through the Social Services Branch, Mumbai as to whether the child was found at the address during the time of raid or thereabout. The Social Service Branch vide letter dated 24th July, 2017 has observed that during the raid no child was found. At this stage Mr.Dave submitted that the child is very much there and at present the child is in Agra. This then explains why the Medical reports are obtained from Agra. The child appears to have been at Agra at all times.

14. As far as other grounds are concerned, the only factor which could have played out in favour of the applicant in the application for bail was the possible presence of child in Mumbai. However, in view of the admitted position that the child is in Agra, there is no justification for now in considering

this aspect. In any case this is not a ground taken up during hearing of the bail application before the trial Court. In the circumstances I do not find this case which calls for interference. I therefore pass the following order :

- (i) Criminal Revision Application is rejected.
- (ii) In view of rejection of criminal revision application, Criminal Application No.346 of 2017 is also rejected.

(A.K. MENON, J.)