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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 394 OF 2017
WITH
CRIMINAL APPLICATION NO. 366 OF 2017
IN
CRIMINAL REVISION APPLICATION NO. 394 OF 2017**

Vaishali Amit Soni ... Applicant

vs.

State of Maharashtra ... Respondent

Mr. Indu Prakash Tripathi i/b. Ms. Bhagyashri Gawas for the Applicant.

Mr. V. B. Konde – Deshmukh, APP for the State.

CORAM : A. K. MENON, J.

DATE : 31st JULY, 2017

P.C.,

1. By this revision application the applicant seeks to challenge order dated 28th June, 2017 passed in Criminal Appeal No. 104/2016 by the Sessions Court whereby her appeal came to be dismissed and her conviction and sentence by the trial Court in Criminal Case No. 746/PW/2014 under Sections 3, 4, 5, 6 and 8 of the Immoral Traffic (Prevention) Act, 1956 was upheld. The accused had pleaded not guilty. However, on 12th January, 2016 the accused was convicted.

2. Today, it is the case of the applicant that the conviction is not justified inasmuch as the applicant had been looking for a flat for residential use and she had come into contact with two estate agents Anant Amrut Bayekar and Prakash

More who operated in the Dahisar – Borivali area and had assured the applicant of accommodation subject to payment of brokerage. It is case of the applicant that said estate agent had arranged for the said premises at flat no. 605, Saishaeel CHS Ltd., A Wing, Dr. Dalvi Road, D'silva Wadi, Dahisar (W), Mumbai to be let on leave and licence to the applicant. Leave and licence agreement was executed on 1st August, 2013. It is the case of the applicant that after executing leave and licence agreement, she came to reside in the flat alongwith her husband and children. However, later a dispute arose between the said estate agent on the aspect of brokerage which resulted in the agent falsely implicating the applicant in the case in question.

3. Learned Counsel for the applicant has submitted that the offence is said to have been committed on 16th August, 2013 which is highly improbable because it was not possible to set up a brothel in a new flat which she had rented only on 1st August, 2016. He questioned the raid and the validity of the so called raid. According to the learned Counsel for the applicant, none of the building occupants were examined. The said flat is in a Co-operative Society and yet the building watchman, lift man or neighbours were not examined. On that count the said impugned order is bad.

4. He further submitted that even the so called customers, panch witnesses were not from the locality and hence the impugned order is bad in law since 15(2) of the Act required that the panch witnesses should be from the locality where the raid was effected.

5. The impugned order records that written arguments were submitted which were in line in the ground in the appeal. Today, it is also argued before this Court that the prosecution witness had not deposed to have received any money from the bogus customers and there are contradictions in the proposition of the prosecution witnesses. Furthermore, according to them out of the two panchas one was a lady who is said to have accompanied the bogus customers. It was submitted that it was highly unlikely that a bogus customer would be accompanied by a woman to a brothel and on this count also the conviction and sentence by the impugned order was challenged.

6. In the course of submissions, he stated that the two prosecution witnesses were only sales girl who happened to be in the premises and it was not a brothel run by the applicant. The learned Counsel for the applicant has relied upon compilation of notes and evidence which interalia proof annexed at Exhibit-8 evidence of the prosecution witness no. 1 Rani Raju Nair. He submitted that the said witness clearly admitted that since her husband had left her and gone to his native place she had started working as a domestic help and started selling under garments door to door and in this connection she had visited the subject flat. However, in her examination in chief, she is seen to have admitted to work in the brothel. She had consented to the same and gave her mobile number to the present applicant. She has admitted that the present applicant would call her in mobile number and pay her sum of Rs.200/- to Rs.300/- for each customer and retain the remaining amount with herself. She admitted that she was present on

16th August, 2013 during the police raid. She also admitted to the presence of the other prosecution witness Asma and the fact that customers were present there. She was rescued by the police.

7. In the cross examination the said witness she admitted on the date of the raid she had not visited the address of the applicant to sell under garments. She denied a suggestion that she had been tutored by the prosecution. Further cross examination she stated that it is not true to say that prostitution business was carried on at the address of the applicant.

8. Having considered the facts, I am of the view, that the contention of the applicant cannot be accepted. Learned Counsel for the applicant also admitted that presently the applicant has two children and that her husband is looking after the children.

9. In the circumstances, I find the concurrent findings of fact of the case warrant no interference by this Court, hence, I pass the following order :

- (i) The Application is rejected.
- (ii) In view of the dismissal of the Criminal Application, Criminal Application No. 366 of 2017 seeking bail is also rejected.

(A. K. MENON, J.)