

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.108 of 2017

1.P.Saraswathi
W/o.K.V.Biju

2.Sandhiya
D/o.K.V.Biju

... Petitioners

Vs.

The State of Tamil Nadu
represented by its
Inspector of Police,
P-4, Ukkadam Police Station,
Coimbatore District.

... Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C.
against the order of learned Judicial Magistrate V, Coimbatore, passed in
C.M.P.No.147 of 2017 in S.T.C.No.3817 of 2016 on 10.01.2017.

For Petitioners : Mr.R.Veeramani

For Respondent : Mr.M.Mohammed Riyaz, G.A(Crl.side)

ORDER

This revision arises against the order of learned Judicial Magistrate V,
Coimbatore, passed in C.M.P.No.147 of 2017 in S.T.C.No.3817 of 2016 on

10.01.2017.

2. Pursuant to registration of a case in Crime No.492 of 2016 on the file of respondent for offences u/s.3(1) r/w 4(2)(c) of the Act altered to 4(2)(c) of the Immoral Traffic (Prevention) Act, 1956, (hereinafter referred to as 'Act'), second petitioner (hereinafter referred to as 'victim') has been placed in the custody of Government Mahalir Home, Sanganur Road, Ganapathy, Coimbatore. Charge sheet has been filed against three accused informing commission of offence u/s.4(2)(c) of the Act. The case was put up for trial in S.T.C.No.3817 of 2016 on the file of learned Judicial Magistrate V, Coimbatore. First petitioner/mother of the victim filed C.M.P.No.147 of 2017 seeking custody of her daughter, the victim. The petition was moved on 09.01.2017. Court below having called for a report from the Probation Officer on 07.11.2016 and being in receipt of the said report dated 03.01.2017, has dismissed the petition on 10.01.2017 informing reasons why it found it not proper to place the victim in the custody of first petitioner 'at this stage'. This revision is preferred against such order.

3. Heard learned counsel for petitioners and learned Government Advocate [Crl.side].

4. Sections 15, 16 and 17 of the Act read as follows:

“15. Search without warrant.—(1) Notwithstanding anything contained in any other law for the time being in

force, whenever the special police officer or the trafficking police officer as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do:

[Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.]

(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code (45 of 1860).

(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.

(5) The special police officer or the trafficking police

officer, as the case may be, after removing the person under sub-section (4) shall forthwith produce him before the appropriate Magistrate.

(5-A) Any person who is produced before a Magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

Explanation.— In this sub-section, “registered medical practitioner” has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).

(6) The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceeding against them in respect of anything lawfully done in connection with, or for the purpose of, the search.

[(6-A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organization.

Explanation.—For the purposes of this sub-section and Section 17-A, “recognised welfare institution or organisation” means such institution or organisation as may be recognised in

this behalf by the State Government.

[(7) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under 94 of the said Code.

16. Rescue of person—(1) Where a Magistrate has reason to believe from information received from the police or from any other person authorised by State Government in this behalf or otherwise, that any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person and produce her before him.

(2) The police officer, after removing the person shall forthwith produce him before the Magistrate issuing the order.

17. Intermediate custody of persons removed under Section 15 or rescued under Section 16 .— (1) When the special police officer removing a person under sub-section (4) of Section 15 or a police officer rescuing a person under sub-section (1) of Section 16, is for any reason unable to produce her before the appropriate Magistrate as required by sub-section (5) of Section 15, or before the Magistrate issuing the order under sub-section (2) of Section 16, he shall forthwith produce her before the nearest Magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate Magistrate, or, as the case may be, the Magistrate issuing the order:

Provided that no person shall be,

(i) detained in custody under this sub-section for a period

exceeding ten days from the date of the order under this sub-section; or

(ii) restored to or placed in the custody of a person who may exercise a harmful influence over her.

(2) when the person is produced before the appropriate Magistrate under sub-section (5) of Section 15 or the Magistrate under sub-section (2) of Section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation.

(3) The Magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person:

Provided that where a person rescued under Section 16 is a child or minor, it shall be open to the Magistrate to place such child in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children:

Provided further that no person shall be kept in custody for the purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over

her.

(4) Where the Magistrate is satisfied, after making an inquiry as required under sub-section (2), –

(a) that the information received is correct; and

(b) that she is in need of care and protection,

he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person, and that those entrusted with the custody of the person, including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the Court, which will be in force for a period not exceeding three years.

(5) In discharging his functions under sub-section (2), a Magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.

(6) An appeal against an order made under sub-section (4)

shall lie to the Court of Session whose decision on such appeal shall be final.

17-A. Conditions to be observed before placing persons rescued under Section 16 to parents or guardians.—
Notwithstanding anything contained in sub-section (2) of Section 17, the Magistrate making an inquiry under Section 17, may, before passing an order for handing over any person rescued under Section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.”

5. The victim has been produced before the Court below in keeping with section 15(5) of the Act and placed in the custody of Government Mahalir Home, Sanganur Road, Ganapathy, Coimbatore. Section 17(2) of the Act requires a Magistrate to cause an inquiry regards matters specified therein and for such purpose, the Magistrate may require a Probation Officer appointed under the Probation of Offenders Act to inquire into the circumstances and personality of the person/victim and prospects of his or her rehabilitation. Sub-section 3 of Section 17 of the Act empowers a Magistrate to pass orders for the proper custody of the person/victim pending such inquiry. Second proviso to sub-section 3 of Section 17 of the Act mandates that the person/victim shall not be kept in custody for a period exceeding three weeks from the date of the order directing inquiry

by the Probation Officer. The period of three weeks stipulated under second proviso to sub-section 3 of Section 17 of the Act has long lapsed even on the date of the Probation Officer's report, the same having been called for on 07.11.2016 and having been made ready on 03.01.2017. Court below treating the petition for custody of the victim as one u/s.437 Cr.P.C. has only made matters worse. The appropriate Magistrate acting under sub-section 4 of Section 17 of the Act, is empowered to direct detention of a person for a period between 1 year and 3 years towards his/her rehabilitation. Greater the power, greater the responsibility. The order under challenge concludes as follows:

“3. On perusal of Probation Officer's report, it is stated that the neighbours of the victim have not stated any satisfactory remarks about the victim girl and her mother, and some body told that they are not leading law abiding and peaceful life.

Moreover, it is also reported that victim's mother is not co-operative and not ready to disclose the family matters and not ready to disclose the family matters and no satisfactory remarks have been given by the neighbours of the Victim girl. Under these circumstances this court finds that it is not safe to release the victim girl to the custody of the petitioner at this stage. Hence this petition is dismissed.”

6. The report of the District Probation Officer also *inter alia* informs thus:

“Past history of the Victim:- The Victim Girl Sandhya aged 18 yrs and 7 months had studied up to SSLC and Ayurvedha Nursing Certificate Course. Then she went to Coimbatore for working as Ayurvedha Nurse in a Private Hospital. She had rare contact with the siblings and family are unaware of how she was involved in an ITP Case in Coimbatore. The members of family are unaware of how she was involved in such an offence. Her mother show much interest her release from the case.”

7. Besides seeing no impediment in placing the victim under the care of first petitioner/mother, the failure to comply with Section 17 of the Act impels this Court to allow this revision.

The Criminal Revision Case shall stand allowed. The order of the learned Judicial Magistrate No.V, Coimbatore, passed in Crl.M.P.No.147 of 2017 in S.T.C.No.147 of 2017 on 10.01.2017 shall stand set aside. The victim shall be released from custody forthwith.

06.02.2017

Note to office:

Issue order copy by 21.02.2017

Index:yes/no

Internet:yes/no

kpr/gm

To

- 1.The Judicial Magistrate V,
Coimbatore.
- 2.The Inspector of Police
P-4, Ukkadam Police Station
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.

C.T.SELVAM, J

kpr/gm

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