

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 1243 of 2018**

1. Rajesh Kelzare (Wrongly Mentioned As Kelsar) S/o Gangadhar Kelzare Aged About 54 Years R/o P.W.S. Colony, Ward No.05, Bramhani, Nagpur (Maharashtra)
2. Nilkanth S/o Madhukar Tandekar Aged About 33 Years R/o P.W.S. Colony, Ward No.05, Bramhani, Nagpur (Maharashtra)
3. Kishore Kumar S/o Suryabhan Singh Gayakwad Aged About 32 Years R/o P.W.S. Colony, Ward No.05, Bramhani, Nagpur (Maharashtra)

**---- Petitioners**

**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station Gandai, District Rajnandgaon, Chhattisgarh

**---- Respondent**

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For petitioners - Shri Mayank Kumar, Advocate.  
For State- Shri Ashish Shukla, Dy.A.G.

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order**

**10/07/2018**

Heard.

1. Instant petition is for quashment of the charge sheet No.258/2017 which is filed under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956.
2. Learned counsel for the petitioners submits that the petitioners are resident of Maharashtra. On the date of incident, incidentally they were passing by near a betel shop and at the same time simultaneously since raid was made false implications have been made against the petitioners. He further submits that even if for the sake of argument it is admitted that the petitioners are the customers the offence under sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 would not be made out. He relies in a case law reported in **2015 3 Crimes (HC) 281** in between **Goenka Sajan Kumar Vs. State of A.P.**
3. Perused the statement. One of the statement of Mahesh Das Ratre

and Jivan Das Ratre is on record wherein they have stated that while raid was conducted present petitioners were apprehended alongwith prostitutes from the house of Itwari Kurre and also from the house of Sonarin Bai. Alongwith them used and unused condoms and other articles were recovered and the girls were also recovered.

4. Section 2 (f) of the Immoral Traffic (Prevention) Act, 1956 defines prostitution which reads as under:-

“Prostitution means the sexual exploitation or abuse of persons for commercial purposes, and the expression 'prostitute' shall be construed accordingly”

5. Section 5 of the Immoral Traffic (Prevention) Act, 1956 reads as under:-

“5. Procuring, inducing or taking <sup>1</sup>[person] for the sake of prostitution.—

(1) Any person who—

(a) procures or attempts to procure a <sup>1</sup> [person], whether with or without <sup>2</sup> [his] consent, for the purpose of prostitution; or

(b) induces a <sup>1</sup>[person] to go from any place, with the intent that <sup>3</sup>[he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a <sup>1</sup>[person], or causes a <sup>1</sup> [person] to be taken, from one place to another with a view to <sup>2</sup> [his] carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a <sup>1</sup>[person] to carry on prostitution, [shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years.”

6. It defines that when a person procures whether with or without consent for the purpose of prostitution it will be an offence under Section 5 of the Act. Prostitution when is been defined with sexual exploitation or abuse of persons for commercial purposes, if the petitioners were held alongwith prostitutes from a house at this stage considering the statement of the witnesses it cannot be stated that they were not procuring the persons for prostitution. The procure-according to the Oxford English

Dictionary means 'get or obtain something or cause someone to do something'. Prima facie statement of the witnesses would show that offence would be made out for framing of charges. Taking into statement of the witnesses prima facie the court cannot go into proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial could prove the guilt. At this stage the final test of guilt whether has been done or not cannot be applied qua the statement of the witnesses. Defence adduced by the petitioners cannot be accepted as gospel truth and they will be at liberty to confront the witnesses with the necessary cross examination at the time of evidence. Therefore, taking into facts of the case, I am not inclined to allow this petition to quash the entire proceeding and the charge sheet against the petitioners. Petition has no merit and it is dismissed accordingly.

Sd/-

(Goutam Bhaduri)

JUDGE