

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.1209 of 2006

* Vasantrao Rajaram Shukla. .. **Applicant.**
(reported to be dead on
14-4-2009)

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Home department,
Mantralaya, Mumbai.
- 2) Commissioner of Police,
Aurangabad. .. **Respondent.**

Shri. R.R. Mantri, Advocate, for applicant.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondents.

Criminal Application No.1208 of 2006

* Shobha w/o Vasantrao Shukla.
Age 53 years,
Occupation: Social Service,
R/o Vyankatesh Nagar,
Jalna Road, Aurangabad. .. **Applicant.**

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Home department,
Mantralaya, Mumbai.

2) Commissioner of Police,
Aurangabad.

.. Respondent.

Shri. R.R. Mantri, Advocate, for applicant.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondents.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 6 AUGUST 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) Criminal Application No.1209/2006 needs to be disposed of as abated as death certificate of Vasantrao, the applicant of the said matter is produced and it is verified by the State. The other proceeding, Criminal Application No.1208/2006, is filed by the wife of Vasantrao for quashing of the case filed against her in the Court of Judicial Magistrate First Class Aurangabad in F.I.R.No.II-3038/2003 for offences punishable under sections 3,4 and 5 of the Immoral Traffic (Prevention) Act, 1956. Both the sides are heard.

2) F.I.R. was given by one A.S.I. of Jinsi Police Station Aurangabad. Dr. Chavan, was the Assistant Commissioner Police of Aurangabad at the relevant time and he had received information about the prostitution business which was being carried at a particular place from Aurangabad. The name of Shobha was given by the informer and the mobile number was also given. It was informed that by using peculiar modus operandi Shobha was calling girls and women from outside to her residential place mentioned by the informer and she was running brothel house. Information was given about the amount which she was charging and the commission which she was giving to middle men.

3) Two panch witnesses were collected by police and a team was formed which included one lady constable by name Shaikh and one lady home guard by name Kale. Chavan was leading the team. At some distance from the residential place they stopped the vehicle and from there one Dharendra was sent to the applicant Shobha as punter for verification. He was instructed to ascertain the things and after that on mobile phone signal was to be given to

Dr. Chavan. He went to the flat of the applicant and at about 21.10 hours he gave a signal. Police and panchas then entered the premises of the applicant. The applicant was present in the house and she opened the door.

4) The applicant was taken in custody by lady constable and lady home guard and then in her presence and in presence of panch witnesses search of the premises was taken. At three places three different couples were found in compromise position. Their names were noted. The punter Dhirendra was also found with one girl and that was the fourth couple. On inquiry these women disclosed that they were doing prostitution in that place and the present applicant used to call them. They gave particulars of the amount which they were receiving and the commission they were required to pay. The punter gave information about the incident which took place after his entering the premises of the applicant and informed that he was offered similar services for consideration of Rs.600/-. His marked money was found with the present applicant. The amount which was found with all the persons was taken over and panchanama was drawn.

F.I.R. was given by A.P.I. The record of the panchanama is consistent on material points with the contents of the F.I.R. Charge sheet is filed and there are statements of the witnesses that prostitution business was going on there. There are statements of the witnesses who had visited the place in the past and to whom the service was offered by the present applicant. It appears that they had used peculiar *modus operandi*. They were collecting customers by spreading information that the deceased husband of the present applicant was expert in *Kundali* and astrology and under that pretext they were collecting customers.

5) It is not disputed that the property where the incident took place belongs to the present applicant. Copy of the P.R. Card is produced on the record.

6) Learned counsel for the applicant submitted that the evidence will be mainly of police officers, interested witnesses and so nothing can be achieved by asking the present applicant to face the trial for aforesaid offences. This submission is not at all acceptable.

Appreciation of evidence is the job of the trial Court and there are witnesses other than police officers also. On that ground the proceeding cannot be quashed.

7) Learned counsel for the applicant then placed reliance on some observations made by the Apex Court and other High Courts in the cases reported as :

- (1) **AIR 1962 SC 63 (Delhi Administration v. Ram Singh);**
- (2) **AIR 2001 SC 137 (Roy V.D. v. State of Kerala);**
- (3) **1983 Cri.L.J. 1833 (Avinash v. State of Maharashtra)**
(Bombay High Court);
- (4) **2003 Cri.L.J. 533 (Mumtaj v. State)**
(Delhi High Court)
- (5) **2002 Cri.L.J. 3205 (Sinu Sainudheen v. Sub-Inspector of Police)** (Kerala High Court).

8) The learned counsel submitted that the procedure which is mandatory and which is mentioned in the aforesaid special enactment was not followed. He drew attention of this Court to the provision of section 14. Section 14 shows that offences committed under this Act are cognizable offences but the arrest without warrant may be made only by the special police officer or under

his direction or guidance, or subject to his prior approval. Similarly, under section 15 if search warrant is not available then only the special police officer who has reasonable grounds for believing that the offence punishable under this Act has been committed, can enter the premises and take search. Sub section (2) of section 15 shows that at the time of taking such search, there needs to be one woman to witness the search. She needs to be inhabitant of that locality.

9) In the present matter there is material of aforesaid nature against the present applicant. The record shows that one special police officer as mentioned in section 14 was present in the team and he was heading the team. The arrest has been effected under his supervision and search of the premises was also done in his presence. In view of these circumstances, at this stage it cannot be said that there is no compliance of the provisions of sections 14 and 15 of the special Act. In the aforesaid cases also it was observed by the Apex Court that if the provisions of special enactment are not complied with, merely on that ground the F.I.R. itself

cannot be quashed. In the present matter there is *prima facie* compliance of the provisions of the special enactment and as there is material of aforesaid nature, the relief claimed cannot be granted. In the result, Criminal Application 1209/2006 is disposed of as abated. Criminal Application No.1208/2006 is dismissed. Rule in both the matters is discharged. Interim relief is vacated.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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