

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN
Crl.R.C.No.908 of 2018

Tuma Venkata Ramana

... Petitioner

vs.

1.State,rep.by
Inspector of Police,
AVS Wing,
Chennai.

2.Tuma Usha Rani

... Respondents

Criminal Revision Petition filed under Section 397(1) and 401 of Cr.P.C., to call for the records pertaining to the order dated 19.07.2018, made n C.M.P.No.816 of 2018, by the IV Metropolitan Magistrate, Saidapet, Chennai, and to set aside the same.

For Petitioner : Mr.P.Prince Premkumar

For Respondents : Mr.G.Harihara Arun Somasankar,
Government Advocate for R1

ORDER

This criminal revision petition is directed against the order dated 19.07.2018, passed by the IV Metropolitan Magistrate, Saidapet, Chennai, in C.M.P.No.816 of 2018.

2.The petitioner/the mother of the victim girl, has moved the trial Court for custody of the girl. The petitioner would state that on 30.03.2018, the first respondent police registered a case in AVS Crime No.50 of 2018, under Sections 3(2)(a), 4(1), 5(1)(a) of the Immoral Traffic (Prevention) Act, 1956. The respondent police rescued the victim girl and produced her before the trial Court on 31.03.2018 and after subjecting her to medical examination, the learned Magistrate ordered the victim girl to be kept under safe interim custody at Government Vigilance Home, Mylapore, Chennai.

3.The petitioner herein, who claims to be the mother of the victim girl, has moved the trial Court for custody of the victim girl, which was dismissed by the trial Court by its order dated 19.07.2018 in CrI.M.P.No.816 of 2018 in AVS Crime No.50 of 2018. The said order is now being challenged in the present Criminal Revision Petition.

4.According to the learned counsel appearing for the revision petitioner, the Probation Officer had conducted an enquiry and recommended that the victim girl may be allowed to reintegrate with her family to continue her regular social life, without any influence and stigma of present case in hand and in such circumstances, the dismissal of custody petition by the learned Magistrate is liable to be interfered with, as the same is unsustainable in law.

5.Per contra, the learned Government Advocate appearing for the respondent police would submit that the learned learned Magistrate has given a detailed reasoning in paragraph No.7 of the order as to why such petition could not be entertained in the interest of the victim. The learned Magistrate has also relied on the decision of the Hon'ble Supreme Court of India on the subject matter and given a detailed reasoning for retaining the victim girl. Paragraph Nos.7 to and 9 of the order passed by the learned Magistrate are extracted hereunder:

"7.It is very unfortunate to note that both the Probation Officers failed to note down the previous case instituted under the Immoral Traffic Act, pursuant to the same victim covered in AVS 11 Crime No.39 of 2015. Whereas, the said Tuma Usha Rani, also shown as victim in the said case and she was given in custody to the one Soma Shankar Reddy S/o.Krishna Reddy, who is claiming as uncle of the victim vide order in Cr.M.P.No.6466 of 2015 dated 10.10.2015, by the Judicial Magistrate Court, Alandur. The petitioner also admits about the said factum of previous case during the in camera proceedings and prays before the Court that she may be given an another opportunity to lead a peaceful life. It is seen from the records that the same plea was taken by the victim in the earlier case registered by the AVS in Crime No.39 of 2015. In the earlier case filed before the Judicial Magistrate Court, Alandur, it has been mentioned that the victim was married to one Kishore, but during in-camera, the victim states that she

is an unmarried woman. Furthermore, the petitioner herein failed to furnish the antecedents of earlier case, in the present Petition filed before this Court and it is a clear suppression of facts. The continuous cases under Immoral Traffic Act., faced by the victim and the suppression facts before, the Court of Law, dis-entitled her to claim reintegration as a matter of right. The explanations offered by the victim about her subsequent delinquency, is not a convincing one and liable to be ignored.

8) The Hon'ble Apex Court in Vishal Jeet v. Union of India (AIR 1990 SC 1412) held as

No denying the fact that prostitution always remains as a running score in the body of civilization and destroys all moral values. The causes and evil effects of prostitution maligning the society are so notorious and frightful that none can gainsay it. This malignity is daily and hourly threatening the community at large slowly but steadily making its way onwards leaving a track marked with broken hopes. Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent but its successful consummation ultimately rests with the public at large.

It is highly deplorable and heart-rending to note that many poverty stricken children and girls in the prime of youth are taken to 'flesh market' and forcibly pushed into the 'flesh trade' which is being carried on in utter violation of all canons of morality, decency and dignity of humankind. There cannot be two opinion indeed there is none that this obnoxious and abominable crime committed with all levels by drastic steps.

9) The victim has been trafficked due to her vulnerable condition. There is no material available before this Court, would go to show that such condition has been changed. Hence, without any hesitation, this Court held that the victim is now in need of care and protection. If she is left out with the petitioner, definitely she will be an easy prey for the traffickers who are waiting to pick her."

6. From the above it is very clear that the learned Magistrate has given sound reasoning for not entertaining the petition, at the instance of the petitioner herein, as that would be against the interest of the victim girl and also not in consonance with Section 17(4) of the Immoral Traffic (Prevention) Act, 1956 and the order was passed within the framework of Section 17(4) of the Act. Section 17(4) of the Immoral Traffic (Prevention) Act, 1956 is extracted hereunder for understanding the submission made on behalf of the respondent police:

"Sec.17(4).Intermediate custody of persons removed under Section 15 or rescued under Section 16:

(1)

(2)

(3)

(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 he 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."

7. A mere reading of the above provision would clearly show that the order passed by the learned Magistrate, refusing to entertain the custody petition, is well founded and does not call for any interference. The

paramount consideration in such matters is the well being and the interest of the victim and the order, which is impugned in the present revision, is passed upholding the interest of the victim girl and in consonance with the provisions of the Immoral Traffic (Prevention) Act, 1956.

For the above reasons, this Court does not find any merit in the present revision petition and is also of the considered view that the order impugned does not suffer from any factual or legal infirmity. Therefore, this criminal revision petition is dismissed.

msk

Sd/--

Assistant Registrar(CS viii)

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Sub Assistant Registrar

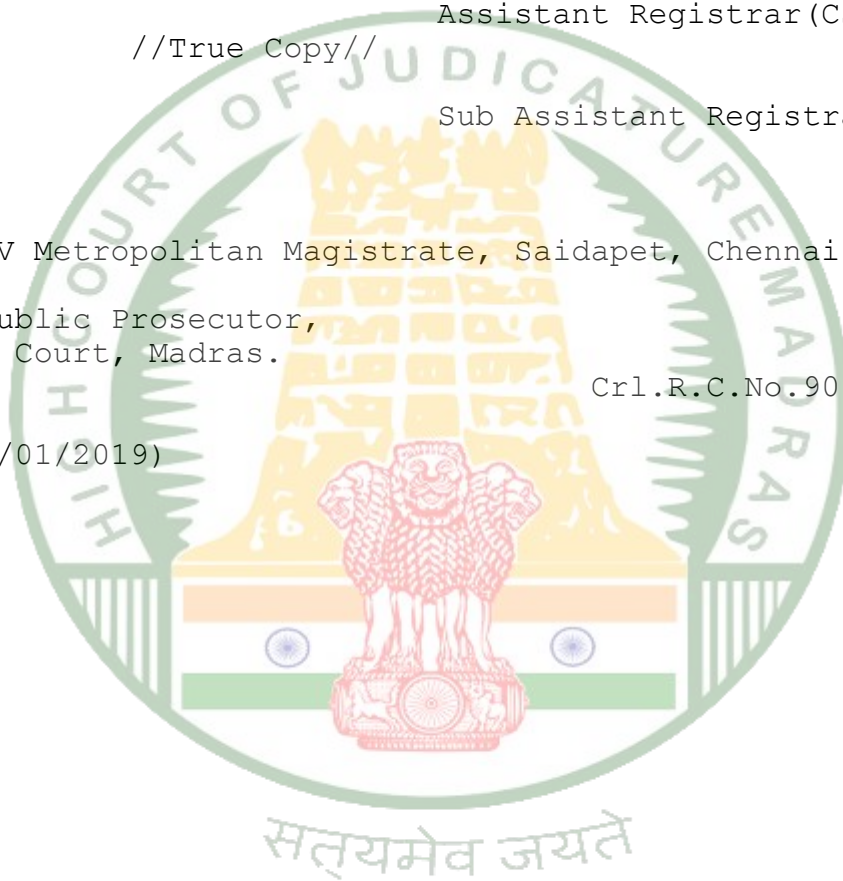
To

1.The IV Metropolitan Magistrate, Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

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A.SK(23/01/2019)



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