

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

CRIMINAL APPLICATION NO.1901 OF 2016

The State of Maharashtra
Through Police Inspector,
Tophkhana Police Station,
Ahmednagar, Tq. & Dist. Ahmednagar.

... **Applicant.**

... **Versus** ...

- 1 Ramesh @ Ramakant Rajaram Barkase,
Age 41 yrs., R/o Civil HUDCO,
Ahmednagar.
- 2 Abdul Haq Fakir Mahammad Kureshi,
Age 37 yrs., R/o Vyapari Mohalla,
Near Taluka Police Station,
Ahmednagar.
- 3 Chetan Popatlal Bhargat,
Age 30 yrs., R/o Sai colony,
Fulari Mala, Savedi Road, Ahmednagar.
- 4 Smt. Sapana Rambhau Shinde,
Age 25 yrs., R/o House No.2,
Indira Nagar, Wanbay Colony,
Nashik.
- 5 Bhagyoday Subhash Patil,
Age 34 yrs., R/o 224,
Mangalwar Peth, Pune.
- 6 Namdeo Maruti Kalaskar,
Age 26 yrs., R/o At Post Watangi,
Tq. Ajara, Dist. Kolhapur.

- 7 Raghavendra Nagappa Pujari,
Age 45 yrs., R/o Balikasharam Road,
Bedekar Mala, Ahmednagar.
- 8 Smt. Kamal Dilip Warade,
Age 37 yrs., R/o Ashish Colony,
Near Don Bosco Highschool,
Savedi Road, Ahmednagar.
- 9 Amit Kailas Madan (Punjabi),
Age 26 yrs., R/o Room No.227,
Krushna Apartment, Near Netaraj Talkies,
Ahmednagar.
- 10 Vilas Balasaheb Karale @ Vilas Chhagan Wani,
Age 32 yrs., R/o Shriram Colony,
Kedgaon, Behind M.S.E.B., Ahmednagar.

... **Respondents.**

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Mr. M.M. Nerlikar, APP for the applicant/State

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**CORAM : T.V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

**Date of reserving
Judgment : 30th NOVEMBER, 2018**

**Date of pronouncing
Judgment : 23rd JANUARY, 2019.**

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the State under Section
378 (3) of the Code of Criminal Procedure, 1973 to challenge the
acquittal of the respondents in Sessions Case No.100/2006 by Judgment
and order dated 10.12.2015 by Additional Sessions Judge, Ahmednagar
for the offences punishable under Section 120-B, 366-A, 376, 376(2)(g),
109, 114 r.w. 34 of the Indian Penal Code and Section 3, 4, 5 & 7 of
Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'PITA
Act').

2 The prosecution had come with a case that the non
Governmental organization by name 'Snehalay' and 'Child-line' are
functioning in Ahmednagar. The main function of the institute is to help
boys and girls below the age of 18. Informant Anil Gawade was serving
in Child-line institute at Ahmednagar. A person came to him along with
his friend on 23.02.2006. That person was the father of prosecutrix in
Sessions Case No.85/2006 (For convenience he has been addressed as
'A'). It was informed that A's daughter is missing since 2.00 p.m. on
22.02.2006. The daughter was aged 14 years. A's friend also told that his
daughter was absent from the house from 16.02.2006 till 8.00 p.m. of
20.02.2006. However, thereafter his daughter was escorted by deceased

accused No.1 on 20.02.2006 at about 8.00 p.m.. Husband of deceased accused No.1 was also along with them. It was told by accused No.1 that in fact, her name is Payal and she had taken daughter of A's friend to Shirdi for attending marriage ceremony. 'A' gave photograph of his daughter and made an application to informant to help him. Again it was told by 'A' that a person by name Satish Pathare had come to him at about 1.00 a.m. to 2.00 a.m. on 22.02.2006 and informed that, that A's daughter had taken away his motorcycle. Satish Pathare informed informant on the next day that his motorcycle has been returned by the prosecutrix, then he had obtained the phone number of the prosecutrix. At that time the daughter was with accused No.1 Sheela Bargal and Satish Jadhav. It was found by all of them that daughter is required to be rescued and therefore informant started searching the girl. Anonymous call was received by him at about 11.00 a.m. on 24.02.2006 and thereafter search was taken in one house situated at Padmanagar, near Pipeline road, Ahmednagar. In the said house the prosecutrix (in this case) was residing with her mother. At that place the daughter of 'A' was found along with the prosecutrix in this case as well as her sister and mother. The prosecutrix in this case and A's daughter were taken to

Child-line institute. At that time original accused No.1, accused No.2, the prosecutrix in another case and their adviser Girish Kulkarni were present in the office. Inquiry was made with both the girls and it was disclosed by them that deceased accused No.1, accused Nos.2, 12 and 11 had compelled both of them to have sexual intercourse with various persons against their will and consent, at various places. It was also informed that those places where the offence was committed was the house of accused Nos.1, 9 and 5. Thereafter, both the prosecutrix were taken to police and after inquiry with the girls, their reports were taken. On the basis of report of prosecutrix in this case offence vide Crime No.51/2006 came to be registered under Section 376, 366A, 114 r.w. 34 of I.P.C. and Section 3, 4 and 5 of PITA Act.

3 During the course of the investigation panchnama of the spot, clothes of the prosecutrix etc. was carried out, statements of witnesses were recorded. As and when the accused persons were transpired; they were arrested. Prosecutrix was sent for medical examination and her medical report as well as proof of birth date was collected. After the completion of investigation charge sheet was filed.

4 Prosecution had examined in all 26 witnesses to bring home

the guilt of the accused. Taking into consideration the incriminating evidence statement of the accused persons under Section 313 of Cr.P.C. came to be recorded. It appears that in the mean time, original accused No.1 has expired. Case has abated against her. After considering the evidence on record and hearing both sides all accused have been acquitted from all charges. The prosecution intends to file appeal to challenge the said acquittal.

5 Heard learned APP Mr. M.M. Nerlikar for State. Perused the record and proceedings. It has been vehemently argued that the learned Trial Court did not consider the evidence properly. Much reliance was placed by the learned Trial Court on the corrections allegedly made in the birth record and it was held that she is not a minor. In fact, the testimony of PW 10 Sanjay Thanekar who was a practicing Advocate ought to have been considered, which showed the involvement of the accused persons. The prosecutrix has been disbelieved mainly on the ground that she was not minor. But she had told her age which ought not to have been disputed. In fact, some of the accused persons were running sex racket and the others had gone there as customer, but inspite of knowledge that the prosecutrix was forced into the flesh business, they had established

sexual intercourse. Under such circumstance, the accused persons ought to have been convicted.

6 It appears that bulky evidence has been led. The point in question was as per the prosecution, the prosecutrix was minor, aged about 16, but then the medical report opined that she is 17 +/- 1. A confusion was created regarding the identity of the prosecutrix and it was tried to be connected with the age of the prosecutrix. Here, the question involved is, if she was minor then her consent would have not been consent at all in the eye of law, but if she can be held to be a major yet whether she was voluntarily in the flesh business or was dragged into, is a question. The prosecutrix in clear words has stated that she was forced into the business. Under such circumstance, if the consent is obtained by force or taking disadvantage of her difficulties, may be by the person who is supplying the girl, would have effect on the act done by the customer or not, is also required to be considered. Various panchnamas were executed and it appears that they have been duly proved. In order to prove the conspiracy an Advocate came to help the prosecution. It was his case that he was knowing that such racket is going on. But the learned Trial Court has discarded his testimony on the ground that he is

not a layman and when he had a knowledge about illegal activity, he ought to have informed it to the concerned persons or ought to have taken legal recourse. It is to be noted that the behaviour of a common man though he may be an Advocate whether such circumstances under the which person is put is of such a nature that he would file a complaint for some other person's cause?. It was stated by him that accused No.11 had given him extra judicial confession. Therefore, the validity of the said extra judicial confession is required to be considered. Questions have been raised in respect of the behaviour of the prosecutrix itself. Therefore, her testimony is definitely required to be revisited to consider her testimony as trustworthy or not. When allegations of such a heinous crime have been made, then her testimony is also required to be considered from her perspective also.

7 It will not be out of place to mention here that another offence which came to light at the same time i.e. Sessions Case No.85/2006, was proceeded and some of the accused persons in this case were also the accused in that case. There were about 23 accused persons in that case. Except accused No.20 who was absconding and accused No.1 who died during the pendency of the trial, all the accused were held

guilty and have been convicted for the offences under PITA Act as well as under Section 376(2)(g) etc. of IPC. Some of them preferred the criminal appeals before this Court i.e. Criminal Appeal Nos.388/2010, 426/2010, 413/2010, 623/2011, 431/2010, 395/2010, 412/2010, 416/2010, 415/2010, 397/2010, 394/2010, 429/2010, 430/2010 and 432/2010. The Division Bench of this Court pronounced a common Judgment in all the appeals on 5th and 6th of November, 2012 and 4th February, 2013. The sentences of some accused persons were confirmed and some of them were modified. It is to be noted that all the accused persons were convicted under PITA Act. The question in this case would be, in case of the offence lodged on the basis of the report by one of the girl, these persons have been convicted under PITA Act, whether they can be convicted in this case under PITA Act or it would amount to *double jeopardy*. However, at this stage the said question may not arise for the simple reason that some of the accused persons have preferred criminal appeals before the Hon'ble Supreme Court challenging their respective sentences. There are many aspects which are required to be revisited. Under such circumstance, definitely case is made out to grant leave to the prosecution to file appeal against the respondents. Hence, the

application is allowed. The appeal be registered and compliance of Section 390 of Cr.P.C. be made.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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