

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

38 CRIMINAL WRIT PETITION NO.1690 OF 2018

Gayatri Baliram Doke,
Age : 25 years, Occu.: Labour,
R/o.: Kolhe near Latur,
Tq. and Dist.: Latur
Through : C/o. (sister) :
Aruna Santosh Waghule,
Age : Major, Occu.: Labour. Petitioner

Versus

1. The State of Maharashtra
2. The Police Inspector,
Gandhi Choak Police Station,
Latur. ... Respondents

...
Mr. S. C. Swami Chakurkar, Advocate for Applicant
Mr. S. D. Ghayal, APP for Respondents-State
....

WITH

CRIMINAL WRIT PETITION NO.1815 OF 2018

Manisha d/o Bhaskar Mhaske,
Age : 23 years, Occu.: Labour,
R/o.: Kolhe near Latur,
Tq. and Dist.: Latur. Petitioner

Versus

The State of Maharashtra

Through : The Police Inspector,
Gandhi Choak Police Station,
Latur.

... Respondent

...

Mr. S. B. Kadu, Advocate for Applicant
Mr. S. D. Ghayal, APP for Respondent-State

...

CORAM : MANGESH S. PATIL, J.
DATE : 18.02.2019

ORAL JUDGMENT :-

These are the proceedings initiated by a victim and by another victim's sister being aggrieved and dissatisfied by dismissal of the Criminal Appeal No. 41 of 2018 preferred by them together under Sub-section 6 of Section 17 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter 'the Act').

2. I have heard the learned advocates for the petitioners and the learned A.P.P.

3. The two women, who are the victims in connection with

the Crime No. 318 of 2018 registered with Kranti Chowk Police Station, Latur for the offences punishable under Sections 3, 4, 5 and 6 of the Act have been directed to be housed in a shelter home by the order passed by the Magistrate under Sub-section 4 of Section 17 of the Act by the order dated 15 October 2018 till 5 October 2019. Being aggrieved, they preferred criminal appeal, that was dismissed by the learned Additional Sessions Judge. Hence, these two writ petitions.

4. The learned advocates for the petitioners submit that the petitioners are major. There are no criminal antecedents. The father of one of the petitioners and the sister of the other petitioner are ready to take care of the women. The Probation Officer had also given consent and still the Magistrate passed the order directing them to be kept in Rehabilitation Center. The order was perverse and arbitrary. The learned Additional Sessions Judge also failed to take in to consideration that the Probation Officer had given consent for releasing the victims and handing over them to their respective relatives. The

learned Additional Sessions Judge seems to have been swayed away by the fact the learned advocate who represented the accused in the crime was representing even the victims' relatives, to infer that there was possibility of victims indulging in the same act. The learned Additional Sessions Judge also overlooked the fact that the father / the sister of the petitioners were ready to take them away and has unnecessarily gone into their ability to maintain the victims, which was not in fact considered by the learned Magistrate while passing the order under Sub-section 4 of Section 17 of the Act. Therefore, both the orders are illegal and may be quashed and set aside and their request may be allowed.

5. The learned A.P.P. opposes both the writ petitions. He submits that no fault can be found with both the orders. There were sufficient and cogent reasons recorded in the orders as to why the victims were to be sent to a shelter home. There is every possibility of their indulging in similar activity and therefore, the writ petitions may be dismissed.

6. I have carefully gone through both the orders. Though the report of the Probation Officer has not been placed on record, the order passed by the learned Magistrate clearly reveals that the Investigating Officer as well as the Probation Officer in their say had given no objection to release the victims from the Rehabilitation Center as they were involved in the immoral act without their wish. If that was the state of affairs, one cannot comprehend any reason as to why independently of the report submitted by the Probation Officer, the Magistrate as well as the learned Additional Sessions Judge could have resorted to independent scrutiny. At least there was no other material before them which could have enabled them to consider the matter, from a different perspective.

7. Apparently the Magistrate had not resorted to the provision of Sub-section 5 of Section 17 by summoning a panel of respectable persons which could have enabled him to arrive at some objective decision. If that was the state of affairs, when the Probation Officer's report was also in favour of

releasing the victims and there was no other aid of any panel to the Magistrate, it is quite apparent that the learned Chief Judicial Magistrate had arrived at some subjective finding rather than objective material to come to the conclusion that the victims would come in contact with the same culprits and would involve in the same activity.

8. For the same reasons even the impugned order passed by the learned Additional Sessions Judge suffers from gross illegality.

9. True it is that it was indeed unethical on the part of the learned advocate who had represented the accused in the same crime even to represent the present petitioners. This has obviously resulted in the learned Additional Sessions Judge drawing an inference that there was every possibility of victims indulging in the same activity. However, again, when the Probation Officer had not specifically remarked anything in that respect and had rather given no objection for releasing the

victims, howsoever strong was the reason for the learned Additional Sessions Judge, neither the victims nor their relatives shall suffer. In respect of one of the petitioners i.e. petitioner in Criminal Writ Petition No. 1690 of 2018 her father had filed an affidavit, whereas in the other writ petition, the petitioner is the sister who has made request to release the victim.

10. In my considered view, both the learned Magistrate as well as the learned Additional Sessions Judge have failed to consider all these aspects in the proper perspective. The orders are illegal and are liable to be quashed and set aside._

The writ petitions are allowed.

The application (Exh-B) filed in Writ Petition No. 1690 of 2018 by the petitioners before the Magistrate is allowed.

The victims shall be released from the Rehabilitation Center and handed over to their respective relatives subject to latter filing an undertaking before the

Magistrate that they shall take utmost care to see that the victims do not land in the same activity.

(MANGESH S. PATIL, J.)

vsm/-