

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1132 OF 2019

Nagar Macchindra Bhui	]
Age-50 years, Occupation : Fishing,	]
R/o. Kanhapuri Tal. Pandharpur	]
Dist. Solapur	]..... Applicant.

Versus

1]	The State of Maharashtra,	]
	through the Pandharpur Taluka Police	]
	Station, Dist – Solapur	]
		]
2]	XYZ....	]..... Respondents.

APPEARANCES-

Mr. Ajay A. Joshi, Advoate for the Applicant.
Mrs. Rutuja Ambekar, APP for Respondent-State.

CORAM : S. S. SHINDE, J
DATE : 17th SEPTEMBER 2019.

JUDGMENT :

1 Rule. Rule made returnable forthwith, and heard finally with the consent of learned counsel appearing for the parties.

2 At the outset it is required to be noted that since the crime registered by the Police is under the Immoral Traffic (Prevention) Act, 1956 so also under the Indian Penal Code and Respondent No.2 – Victim XYZ is alleged to have been compelled to involve herself in prostitution, the identity of

Respondent No.2 herein needs to be concealed, and hence she is referred to as XYZ. The Registry is directed to maintain the record accordingly.

3 By this application, the Applicant takes exception to the order dated 20/03/2019 passed by the learned Additional Sessions Judge, Pandharpur by which order the Criminal Appeal No. 18 of 2019 filed by the Applicant herein came to be rejected and resultantly the order dated 23/01/2019 passed by the learned 2nd Joint Judicial Magistrate First Class, Pandharpur, District Solapur, in Crime No.19 of 2019 sending Respondent No.2 herein i.e. Victim XYZ in the aforesaid crime for a period of one year for her care and protection in Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune came to be confirmed.

4 Brief facts leading to filing of the present application are as under:-

It is the case of the prosecution that Respondent No.2 herein was found in a lodge in a raid effected by the Sub Divisional Police Officer, Pandharpur. FIR bearing CR No.19 of 2019 came to be registered with Pandharpur Taluka Police Station against 11 accused persons. Respondent No.2 – XYZ being victim of the crime was rescued and was temporarily kept in the custody of a social worker. The Pandharpur Taluka Police filed an application before the learned JMFC, Pandharpur praying therein to issue

directions to keep Respondent No.2 – XYZ in the Corrective Institution. The victim has filed an application before the learned Magistrate on 17/01/2019 requesting to permit her to go to home. Thereafter the learned Magistrate recorded the statement of victim on 19/01/2019 wherein she stated that she wants to go to her home and she will not do the said mistake again in future. The learned Magistrate also recorded the statement of the Applicant on 23/01/2019, wherein the Applicant demanded the custody of the victim. The learned JMFC also directed the Probation Officer to make an inquiry as per provisions contemplated in the Immoral Traffic (Prevention) Act, 1956 (for short “the said Act”). Accordingly the probation officer after making inquiry submitted his report to the learned JMFC. As indicated herein above, the learned JMFC vide order dated 23/01/2019 sent the victim to the corrective institution for her care and protection for a period of one year.

5 Being aggrieved by the said order dated 23/01/2019 passed by the learned JMFC, the Applicant herein has filed Criminal Appeal No.18 of 2019 before the learned Additional Sessions Judge, Pandharpur. After hearing both the parties, the learned Additional Sessions Judge, Pandharpur has dismissed the Appeal by the impugned judgment and order dated 20/03/2019. It is the said order dated 20/03/2019 passed by the learned Additional Sessions Judge, Pandharpur, rejecting the Appeal of the Applicant which is taken exception to by way of the present Criminal Application.

6 I have heard the learned counsel for the parties. The learned counsel for the Applicant submits that the impugned orders passed by the Trial Court as well as the Appellate Court are improper, incorrect and illegal. He submitted that the learned Magistrate has wrongly relied upon the report of probation officer. It is further submitted that the learned Magistrate erred in holding that the financial condition of applicant is weak as the family of applicant is doing business of fishing and supplying fish to the hotel. The learned counsel for the Applicant submits that, it is the bounden duty of the State to protect the interest of the victim having organizations such as protection homes, but at the same time in absence of the willingness of an adult victim she cannot be kept in a protection home. He also submitted that Article 19 of the Constitution of India guarantees the right of freedom and Article 23 provides for abolition of beggar or slavery or forced labour. He also submitted that under the Constitution of India every citizen has right to move freely through out the territory of India as also has a right to choose a vocation and victim has a right to reside at the place of her choice, but the said rights are conferred with reasonable restrictions. The learned counsel for the Applicant further submitted that the victim-xyz is major. He therefore submits that a person, who has attained the age of majority cannot be restricted or cannot be kept in home since he/she has a right to carry out his/her own vocation as also he/she has a right to freely move through out the territory of

India and he/she has a right to reside at the place of her choice. It is the contention of the learned counsel for the Applicant that the wish of the victim to go to her home is ought to have taken into consideration, however, both the Courts below have ignored the said fact. He therefore prays that Criminal Application may be allowed and custody of the victim may be handed over to the Applicant.

7 The learned APP relying upon the reasons assigned by the learned Magistrate, as well as the learned Additional Sessions Judge submitted that, both the Courts below upon appreciation of the material placed on record and keeping in view the interest of victim has passed the orders sending/keeping the victim to the Corrective Institution for a period of one year for her care, protection and rehabilitation. He therefore submitted that the Criminal Application may be rejected.

8 Having heard the learned counsel for the parties, I have bestowed my anxious consideration to the rival contentions. I have perused the grounds taken in the Application and the annexures thereto as also the reasons assigned by both the Courts below and the material placed on record. It appears that the Applicant is the mother of victim who claims the custody of the victim. It needs to be noted at this stage that when the victim produced before the learned Magistrate, she filed an application requesting therein to go to her

home. It is also required to be noted that in the statement before the learned Magistrate, the Applicant also requested custody of the victim. So also the victim in her statement before the learned Magistrate expressed her desire to go to her home.

9 In so far as the contention of the learned counsel for the Applicant that, Victim-XYZ, being major, cannot be sent to the said Corrective Institution against her wishes, and she has a right to reside at the place of her choice, to move freely through out the territory of India and to chose her vocation is concerned, similar issue/contention has been raised before this Court in *Writ Petition No. 2050 of 2019 (Asiya Anwar Shaikh v/s. State of maharashtra and anr.)* and whilst deciding the said Writ Petition this Court (Coram : S S Shinde, J) by order dated 11th July 2019 has dealt with the said issue/contention and has observed in paragraph Nos. 11 to 15, as under :-

11 However, the important question that has been raised in this Petition is that, Respondent No.2 - Victim being major can be sent to the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune against her wishes. The learned counsel for the Petitioner submits that Respondent No.2 -Victim has a right to reside at the place of her choice, to move freely through out the territory of India and to chose her vocation.

It is true that every citizen has right to chose his/her vocation, to move from one place to another through out the territory of India, and other fundamental rights enshrined in the Constitution of India. Under Clause (1) of Article 19 all citizens shall have the right ---

(a) to freedom of speech and expression;

- (b) to assemble peaceably and without arms;
- (c) to form association or unions (or co-operative societies);
- (d) to move freely through out the territory of India;
- (e) to reside and settle in any part of the territory of India, and
- [****]
- (g) to practise any profession, or to carry on any occupation, trade or business.

12 Indisputably Respondent No.2 Victim XYZ is major, therefore it is imperative to consider her wishes. There is no doubt that the State Government within its power under the said Act, keeping in view of the interest of the victim, can seek appropriate directions from the Court to send the victim to Corrective Institution. It is true that the fundamental rights conferred upon the citizen of India in Part III of the Constitution of India are with reasonable restrictions mentioned in each Article. The fundamental rights of the citizen enshrined in Part III of the Constitution of India stand on higher pedestal vis-a-vis statutory right or any other rights conferred by the general law. Therefore I find considerable force in the submission made by the learned counsel for the Petitioner that the victim being major, her fundamental right to move from one place to another place, reside at the place of her choice and to chose her vocation has to be considered, and contrary to her wishes she cannot be asked to reside in the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune.

13 It is pertinent to mention at this stage that the police machinery has not brought on record any material suggesting that Respondent No.2 Victim XYZ is suffering from disability or her case is covered by reasonable restrictions under Article 19 of the Constitution of India, and setting her free would cause danger to the society. It is also required to be noted that nothing is placed on record by the police which would show that her right to move from one place to another place or reside at the place of her choice is hampered due to restrictions imposed in Article 19 of the Constitution of India.

14 In the facts of the present case, Respondent No.2 - Victim XYZ was sent and/or kept in the Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune for her care and protection, by order dated 23/01/2019 passed by the learned JMFC. Prior to passing the order by the learned JJMC, a raid was conducted by the Taluka Police Station Pandharpur at Hotel Sangam Lodge, Pandharpur and during the said raid, the victim was found in the said lodge and, as alleged by the concerned Police Department, Respondent No.2 - Victim XYZ along with other victims was involved in the prostitution. The accused are being prosecuted by registering Crime being C.R.No.19 of 2019 under Sections 370, 343 of the Indian Penal Code and, under Sections 5, 6, 7 of the Immoral Traffic (Prevention) Act, 1956, and in the said Crime Respondent No.2 – Victim XYZ is treated as victim and sent in Corrective Institution for her care and protection. Therefore, it can be said that she was sent in the said Corrective Institution for her care and protection.

15 Respondent No.2- Victim XYZ is in the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune. for more than six months. Therefore considering the report of probation officer and also considering the fact that Respondent No.2 - Victim XYZ has spent a period of more than six months in the said Corrective Institution, the ends of justice would be met in the present case, if the directions are given to release Respondent No.2 - Victim XYZ from the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune.

10 In the present case, the victim XYZ is a major aged about 22/23 years. She has stated in her application as well as in the statement before the trial Court that her permanent address is at village Sangola, Tal Pandharpur. This Court has already in the aforesaid Writ Petition No.2050 of 2018 has

taken a view that the victim being major, her fundamental right to move from one place to another place, reside at the place of her choice and to chose her vocation has to be considered, and contrary to her wishes she cannot be asked to reside in the Corrective Institution. It is submitted across the bar that the Victim XYZ is in the Corrective Institution i.e. Prerana Mahila Wastigruh, Baramati, Dist. Pune since the date of order of the trial court. It means the Victim XYZ has spent near about eight to nine months in the said Corrective Institution.

11 In the light of the discussion in foregoing paragraphs, the ends of justice would be met, if the impugned orders passed by the Courts below are modified/curtailed to the extent mentioned herein below. Hence the the following order is passed :-

1] The direction issued by the Additional Sessions Judge, Pandharpur, sending/keeping the Victim XYZ in the said Corrective Institution for one year stands modified/curtailed to the period already spent by Respondent No. 2- Victim XYZ in the said Corrective Institution, however, subject to clause (2) mentioned herein under, and upon completion of usual procedural formalities.

2] Respondent No. 2- Victim XYZ should be set at liberty and to be released forthwith, however, after ascertaining her wish, whether she desires to continue her stay in the Corrective Institution for remaining period or wants to be set at liberty/freed from the said Corrective Institution.

3] The prayer of the Applicant to handover the custody of the Respondent No. 2- Victim XYZ to the Applicant stands rejected, and as observed herein above after Respondent No. 2- Victim XYZ is released, she is free to move as per her wishes.

4] With the aforesaid directions, criminal application is disposed of. Rule is made absolute to the aforesaid extent.

[S. S. SHINDE , J]