

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1891 OF 2019

Lekhraj Omprakash Jhanjawat	]	
Hindu, Aged about 27 years,	]	
Occ : Marketing,	]	
Residing at Pander, Bhilwada,	]	 Petitioner
Rajasthan State	]	Orig. Applicant.

Versus

The State of Maharashtra	]	
(At the instance of Vishrambaug Police	]	
Station, Sangli)	]	 Respondent.

Mr. Dhiraj C Gole for the Petitioner.
Mr. A R Patil, APP for the Respondent/State.

CORAM : S. S. SHINDE J.
Reserved on : 12th July 2019
Pronounced on : 22nd July 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel 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 (for short “the said Act”) so also under the Indian Penal Code and Victim is alleged to have been compelled to involve herself in prostitution, the identity of the victim needs to be concealed, and hence she is referred to as Victim - XYZ. The Registry is directed to maintain the record accordingly.

3 This Writ Petition takes exception to the order dated 13/12/2018 passed by the Additional Sessions Judge, Sangli by which order Criminal Appeal No.198 of 2018 filed by the Petitioner against the order dated 22/10/2018 of the learned Judicial Magistrate First Class, Sangli came to be dismissed. By order dated 22/10/2018 the learned Magistrate rejected the Application filed by the Victim XYZ through her guardian brother, who is Petitioner herein, for handing over the custody of the Victim XYZ to her brother i.e. the Petitioner herein, and sent the Victim-XYZ to Asha Kiran, Mahila Shasakiya Nivas-Sthan, Karve Naka, Opposite to Market Yard, Karad, Dist. Satara for a period of one year (herein after referred to as “the Corrective Institution”).

4 Brief facts leading to filing of the present Writ Petition, in brief, can be stated as under :-

 On 11/10/2018, Vishrambag Police Station received secret information that the accused Vinayak and his wife Hasina have indulged in providing girls to men customers for sexual activities and for that purpose, they are charging Rs.3,500/- for a girl, per hour. Upon receiving information, a trap was arranged, and a raid was conducted at Flat No.3, Shrinath Residency Vijay Colony, Sangli. During the said raid it was revealed that, the accused and his wife were running a brothel. The victim XYZ, who is 30 years old, was rescued

from the said place. Thereafter the police produced the victim before the learned Magistrate, Sangli. The learned Magistrate passed the order under Section 72 of the said Act, calling upon the reports from the medical officer and probation officer, and sent the victim to Bhagini Nivedita Pratisthan, Stay Home at Sangli. Thereafter, as stated herein above, the Petitioner filed an application for the custody of Victim XYZ before the learned Magistrate which came to be rejected. The Appeal filed against the said order of the learned Magistrate also came to be rejected by the Appellate Court by the impugned order dated 13/12/2018. The said order dated 13/12/2018 passed by the Additional Sessions Judge, Sangli and the order dated 22/10/2018 passed by the learned Magistrate are taken exception to by way of the above Writ Petition.

5 It is the case of the Petitioner that Petitioner is the brother of Victim-XYZ, and is the resident of village Pander, District Bhilawada, Rajsthan. The victim has been taken into custody without any illegal act on her behalf, by the Police. The victim in her statement before the Police stated that, with the help of her friend, she came in contact with the accused, and the accused had informed the victim that, there is availability of work to her relating to massage at Sangli, and therefore the victim came to Sangli in search of work on 09/10/2018 and she took the shelter at the residence of the accused. The Petitioner further stated that, he is ready to take the responsibility of victim,

and considering the future of the victim, custody of the victim be handed over to him.

6 It is required to be noted at this stage that, in the subsequent statement recorded by the Police under Section 164 of the Criminal Procedure Code, on 15/10/2018 the victim has categorically stated that, she had never shown her willingness to indulge into prostitution, but she was forced to involve herself into immoral act. She had no money to return from Sangli to Rajasthan and to her native place in the said State. Therefore, contrary to her wishes, she allowed two customers, so that certain money can be earned to purchase ticket for going to Rajsthan.

7 The learned Magistrate has referred the victim for medical examination as regards determination of age and to find out sexually transmitted diseases, if any. A report from Probation Officer about the details of family, character and antecedents of the applicant/victim was also called for, so also Say of Investigating Officer was called for by the learned Magistrate. The learned Magistrate has observed that, there are no documents to show that the proposed persons are the brother and mother of the victim, and their relationship cannot be ascertained on the basis of oral submissions. It is also observed by the learned Magistrate that, victim was indulged in illegal activities and her family members were incapable to take proper care of her.

The learned Magistrate, upon considering the material placed on record, did not deem it appropriate to hand over the custody of the victim to the Petitioner, and accordingly rejected the application.

8 Being aggrieved by the order of the learned Magistrate, the Petitioner filed Criminal Appeal No.198 of 2018 before the Sessions Court, Sangli. The Appellate Court observed that the family ration card produced by the Appellant i.e. the Petitioner herein, shows the name of the victim in different manner. The Appellate Court also observed that there is no record and document produced by the Appellant to show that they have lodged a missing report. The Appellate Court has also taken note of the fact that the Victim-XYZ has a girl child. The Appellate Court, in the interest of victim and considering the future of the victim, deemed it appropriate to send the victim to a NGO for vocational training for one year. The Appellate Court did not find any illegality in the order passed by the Trial Court, and did not deem it appropriate to interfere with the impugned order passed by the Trial Court and accordingly rejected the Appeal filed by the Petitioner.

9 I have heard the learned counsel for the parties. The learned counsel for the Petitioner submitted that the impugned orders passed by the Trial Court as well as the Appellate Court are improper, incorrect and illegal. He submitted that both the Courts below did not consider the report of

probation officer who has clearly opined to hand over the custody of the victim to the Petitioner. He further submitted that even the Investigating Officer has also expressed his opinion to hand over the custody of the victim to the Petitioner. Both the Courts below have failed to take into consideration the fact that, the victim was staying with her mother and brother in Rajasthan and she has a girl child. The learned counsel for the Petitioner submitted that the victim has come in Maharashtra in search of work/to earn livelihood, but was cheated by her friends. The learned counsel for the Petitioner contended 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 Petitioner further submitted 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

Petitioner that the wish of the victim to stay with her brother i.e. the Petitioner herein and her mother, as the victim is a major, has to be considered, however, both the Courts below have ignored the said fact. It is further contended that though the Probation Officer, after taking into consideration various factors, in his report opined that the custody of the victim may be given to the Petitioner, both the Courts below have also ignored the report of the probation officer, so also the Say of the Investigating Officer, which speaks about the handing over the custody of the victim to the Petitioner. The learned counsel for the Petitioner submitted that, the victim has a girl child, and Petitioner i.e. the brother of the victim has expressed his desire to maintain the victim and her girl child. He therefore prays that writ petition may be allowed and custody of the victim may be handed over to the Petitioner.

10 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 Writ Petition may be rejected.

11 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 Writ Petition and the annexures thereto as also the reasons assigned by both the Courts below and the material placed on record. It appears that the Petitioner herein is the real brother of the victim who claims the custody of the victim. It is required to be noted that the Probation Officer has submitted his report wherein he mentioned his No Objection to hand over the custody of the victim to the Petitioner/Applicant. It is also required to be noted that in the Say submitted by the Investigating Officer, he has given his No Objection to hand over the custody of the victim to her brother. The report of the probation officer discloses that the victim is a married woman and she has quarreled with her husband and she is staying at her mother's house for four years. The Report further shows that the victim had come to Pune with her friend in search of work for earning livelihood for survival, and she indulged in such an immoral act because of her poor financial condition. In the subsequent statement of the victim dated 15/10/2018 recorded by the Police under Section 164 of the Criminal Procedure Code, she stated that initially she opposed to indulge into prostitution, but she did not have money to return back to Rajasthan and therefore she consented for prostitution. Prima facie it seems that, she had no money to return from Sangli to Rajasthan and, the said difficulty and situation compelled her to indulge into sexual activities against her wish. It is also stated by the Victim before the police that because of her inability she had come there in search of work and she has a small child. It is

observed by the Appellate Court that the victim left her mother's home without intimating to anybody and moreover there is no record to show that any missing report has been lodged by the Petitioner. The learned Magistrate observed that the victim belongs to another State, and she has no permanent residence in Sangli. She is deserted by her husband, and the family of the Petitioner is financially poor, and they have no sufficient means to take care of the victim. It appears that in spite of the report of the Probation Officer and the Say of the Investigating Officer, the learned Magistrate deemed it appropriate to send the victim to Corrective Institution for one year for her care, protection and rehabilitation. The Appellate Court also confirmed the findings recorded by the learned Magistrate and rejected the Appeal filed the Petitioner.

12 In so far as the contention of the learned counsel for the Petitioner 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.

13 In the present case, the victim XYZ is a major and has a 4 years old girl child. She has stated in her statement that her permanent address is in District Bhilwada, Rajasthan State. The Petitioner who claims to be her brother also stated that he is residing at the same address in Rajasthan. 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. In the present case, the Victim XYZ is in the said Corrective Institution i.e. Asha Kiran Mahila Shasakiya Nivas-Sthan, Karve Naka, Opposite to Market Yard, Karad, Dist. Satara for one year from the date of the order i.e. 22nd October 2018 passed by the learned Judicial Magistrate First Class. It means the Victim XYZ has spent near about nine months in the said Corrective Institution.

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 Judicial Magistrate First Class, Sangli sending/keeping the Victim XYZ in the said Corrective Institution i.e. Asha Kiran Mahila Shasakiya Nivas-Sthan, Karve Naka, Opposite to Market Yard, Karad, Dist. Satara for one year stands modified/curtailed to the period already spent by - Victim XYZ in the said Corrective Institution, however, subject to clause (2) mentioned herein under, and upon completion of usual procedural formalities.

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 said Corrective Institution for remaining period or wants to be set at liberty/free from the said Corrective Institution.

3] The prayer of the Petitioner to handover the custody of the Victim XYZ to the Petitioner stands rejected, and as observed herein above, after Victim XYZ is released, she is free to move as per her wishes.

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

[S.S. SHINDE, J.]