

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

CRIMINAL APPLICATION NO. 1459 OF 2018

Mohammad Juned Mohammad Rauf @
Mohammad Juned Maruf Mohammad Rauf,
Age; 32 years, Occ; Service,
R/o; Juna Bazar, Beed, Tq. & Dist. Beed.

**...APPLICANT
(Accused)**

V E R S U S

The State of Maharashtra,

**...RESPONDENT
(Complainant)**

.....
Shri. H.V.Tungar, Advocate for the applicant
Shri R.V.Dasalkar, A.P.P.for the Respondent/ State
.....

**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 4th FEBRUARY, 2020

JUDGMENT : [PER : M.G. SEWLIKAR, J.]

Rule. Rule is made returnable forthwith. With the consent of the parties at the admission stage heard finally.

2. The applicant has filed this application under Section 482 of the Code of Criminal Procedure seeking invocation of inherent powers of this Court for quashing the F.I.R. dated 25.3.2018 No. 228 of 2018 punishable under Section 3, 4, 5 and 7 of the Immoral Traffic

(Prevention) Act, 1986 (PITA Act) and under Section 370 of the Indian Penal Code.

3. Facts giving rise to this application are that on 24.3.2018, the complainant got the tip off that one Usha Ratnaprakash Thakur, a lady who is a tenant in the building of Balasaheb Kerba Suryawanshi, Rajiv Gandhi Square, Shriramnagar, Shivnery Colony, Beed, is running brothel. To ascertain the truthfulness of the information, a dummy customer was sent to the said brothel with a currency note of Rs. 500/- bearing No. 5 RW 533564. Accordingly a pancha and the said dummy customer were sent to the said brothel. The raiding party consisting of the informant, Police Naik Dahiphale, Nitin Savale, lady police Naik Gore, Chaure, and others followed them. On getting signal from the dummy customer, the raiding party raided the brothel of the said tenant at 00.30 hours. The raiding party noticed one woman and two gents. The said lady told her name and introduced her as the tenant of the said Balasaheb Suryawanshi and those two males told their names as Vishnu Laxman Shinde and Mohammad Juned Mohammad Rauf @ Mohammad Juned Maruf Mohammad Rauf (the applicant herein). On taking personal search of those two males, cash of Rs. 5,000/- and a mobile hand set of Samsung Company Note-3, a SIM Card of Idea Company bearing No. 9028905220, two currency notes of Rs. 2,000/- and two currency notes of Rs. 500/- were found in the personal search of Vishnu Laxman Shinde. In the personal search of the applicant a

Mobile of HTC Company, and SIM Card of Idea Company bearing No. 9689712513 and 50 currency notes of 100/- totalling Rs. 5,000/- were found. Those articles were seized. In the adjoining room there was one lady. The said lady on inquiry stated that the said tenant runs a brothel and she (the tenant) calls the said lady on phone. On taking search of the room 20 condoms were found. The said lady also said that the said tenant retains half of the amount and pays her remaining half amount. On taking search of the said tenant, a currency note bearing No. 5 RW 533564 was found, which matched with the note given to the dummy customer. On these allegations, F.I.R. has been filed by the informant Shivaji Shahadev Bharti, A.S.I., B.No. 2039, on the basis of which offence punishable under Section 3, 4, 5 and 7 of the PITA Act and under section 370 of the I.P.C. has been registered.

4. Heard Shri. H.V.Tungar, learned counsel for the applicant Shri R.V.Dasalkar, A.P.P. for the Respondent/ State.

5. Shri Tungar, the learned counsel for the applicant submitted that the F.I.R. reveals that the applicant was not running the brothel. He further submitted that at the most the applicant will be treated as a customer and a customer does not come within the purview of the PITA Act. He therefore prayed for the quashment of the F.I.R.

6. Pursued the investigation papers. The investigation papers reveal that soon after the raid, panchanama was prepared on 25.3.2018. In the said panchanama the applicant has been described as a customer. Similarly, notice under Section 50 of the Code of Criminal Procedure has been given to applicant and one Vishnu Laxman Shinde and they have been described in the notice as the customers. It is, thus, clear that the prosecution has been treating the applicant as a customer and not the person who was running the brothel. It will have now be seen, whether Sections. 3, 4, 5, 6 and 7 of the PITA encompasses the customer.

7. Section 3 of the PITA Act prescribes punishment for keeping a brothel or allowing premises to be used as a brothel. Admittedly, as per the prosecution own story the applicant is not running a brothel or allowing his premises to be used as brothel. Therefore, Section 3 will have no application to the facts of the case in hand.

8. Section 4 of the PITA Act, 1956 prescribes punishment for living on the earnings of the prostitution of any other person. Indisputably, the applicant is not the person, who is making his living on the earnings of the prostitution of any other person.

9. **Section 5 of the Immoral Traffic (Prevention) Act, 1956** reads as under :

"5. Procuring, inducing or taking ²⁶[person] for the sake of prostitution.—

(1)any person who —

(a) procures or attempts to procure a ²⁶[person], whether with or without ²⁷[his] consent, for the purpose of prostitution; or

(b) induces a ²⁶[person] to go from any place, with the intent that ²⁸[he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a ²⁶[person], or causes a ²⁶[person] to be taken, from one place to another with a view to ²⁷[his] carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a ²⁶[person] to carry on prostitution;

²⁹[shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years :

Provided that if the person in respect of whom an offence committed under this sub-section, —

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;]

*³⁰[***]*

(3) An offence under this section shall be triable —

(a) in the place from which a ²⁶[person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such ²⁶[person] is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made."

10. Thus, for pressing into service the provisions of Section 5 the prosecution has to prove that a) the applicant had procured a person for the purpose of prostitution. For pressing into service Sub Section (b), the prosecution has to adduce evidence to show that the applicant had induced a person to go from any place with intent that he may for the purpose of prostitution become inmate of, or frequent, a brothel. For invoking the provisions of Sub Section (c) there has to be evidence to show that the applicant took or attempted to take a person from one place to another with a view to carry on prostitution.

11. None of the Sub Sections a to c can be pressed into service so far as the applicant is concerned, as it is not the case of the prosecution that the applicant procured any person or induced any person to go from any place for the purpose of prostitution or took a person from one place to another for carrying on prostitution.

12. This Court had occasion to interpret the provisions of **Section 5 (1) (d) of the Immoral Traffic (Prevention) Act, 1956** in **Criminal Writ Petition No. 564 of 2018 - Eimm Abdulamir Jassem Al-Allaf vs State of Maharashtra**, with **Criminal Application No. 1081 of 2018 - Shashank Yashdeep Khanna vs The State of Maharashtra** with **Criminal Application No. 1039 of 2018 Derek Ellias Machado and Ors. Vs. The State of Maharashtra - decided on 1st November, 2018** to which one of us

(Justice T.V. Nalawade) was a party. In this authority it has been held as under :

"Now, Section 5 (1) (d) of the Act prescribes that if person has caused or induced a person to carry on prostitution, then such person would be liable for punishment. Two main ingredients are necessary for a case to be covered under this provision. They are 'causing' or 'inducing'. Word 'Cause' has not been defined in PITA Act. The dictionary meaning of word 'cause' means 'A person or thing that gives rise to an action, phenomenon, or condition.' In law, the term carries different meaning taking into consideration different references. e.g. Good cause, reasonable cause, cause of action etc. Now we are required to see in what context the said word is used in this section. Taking into consideration the object of the Act, it can be said that the said word is used with a sense that those persons who are responsible to throw the victim in the flesh trade should be punished. Further there is element of use of force attached to the said meaning. Same is the case with the word 'induced'. Both these word connote that accused should not have left victim and created such situation that she would not have any option than to go into the flesh trade. Here the allegations against the petitioner are that he had solicited sexual intercourse from the girl. As per the prosecution story the girls were already into the said business. There is no evidence in the form of statement of any person that present petitioner had paid specified amount to the Manager for the act. As per the prosecution story, petitioner was found in half naked condition in a room. In fact, the dummy customer would not have any occasion to see where present petitioner was before he gave signal. His statement also does not disclose that he had peeped in another room also, before giving signal, to see what is going on in that room. The position of petitioner was allegedly traced only after raiding party arrived. That means except the fact that

petitioner was found in a room, there is nothing in the entire charge-sheet. Only on the basis of such statement, how it can be said that he had 'caused' or 'induced' any girl to take up prostitution? At the cost of repetition, it can be said that there is no evidence on record to show that petitioner had paid the prescribed fee or charges at the counter before entering in the room. The person who had allegedly accepted the amount is an accused in this case. Therefore, even if he would have made a statement to that effect, it is inadmissible. Therefore, the case does not even fall under Section 5 (1) (d) of the Act."

13. Thus, the Division Bench of this Court in the case of **Eimm Abdulamir Jassem Al-Allaf vs State of Maharashtra** (supra) considered the Dictionary meaning of 'the cause', as expression 'cause' has not been defined in the PITA Act. According to the Division Bench, 'cause' means 'A person or thing that gives rise to an action, phenomenon, or condition'. The Division Bench of this Court further noted that in law the term carries different meaning having regard to different references i.e. act 'cause, 'reasonable cause', 'cause of action' etc. The Division Bench of this Court further noted that the word 'cause' is used for those persons who have intended to bring the victim in the flesh trade. Similar observations have been found in the case of **Criminal Application No. 367 of 2018 - Rohan s/o Rajendra Kulkarni Vs The State and Anr. With Criminal Application No. 455 of 2018 - Swati Trimbak Khamkar and Anr. Vs. The State of Maharashtra decided on 21.3.2018.**

14. If the case at hand is considered on the touch stone of the principles laid down in the case of **Eimm Abdulamir Jassem Al-Allaf vs State of Maharashtra** (supra), it is evident that the case at hand is squarely covered by the aforesaid authorities.

15. On perusal of the investigation papers, not a single statement is found indicating that the applicant had caused or induced a girl to carry on prostitution. It is not the case of the prosecution that the applicant induced or caused these girls to carry on prostitution. The F.I.R. and the panchanama show that when the raiding party raided the brothel, the applicant with one more person Vishnu Shinde was found.

16. It is the prosecution story that these girls were already in the business of prostitution. There is no evidence to indicate that the applicant had paid any amount to the Manager for such act. It is the prosecution's case that when the raiding party raided the brothel, the applicant was found there with another person. Thus, there is nothing in the investigation papers to indicate that the applicant was doing anything to suggest that the applicant caused or induced any girl to carry on prostitution. Mere presence at the brothel, will not amount to causing or inducing any person to carry on prostitution. Therefore, soliciting sexual intercourse from a girl will not come within the scope of the Section 5 of the PITA Act.

17. Section 6 of the PITA Act prescribes punishment for detaining a person in the premises where the prostitution is carried on. It is not the case of the prosecution that the applicant had detained any girl in that premises. Having regard to this, it cannot be said that any cognizable offence is made out against the applicant. Therefore, this case is squarely covered by the parameters laid down by the Hon'ble Supreme Court in the case of "**State of Haryana and Ors. V/s. Ch. Bhajan Lal and Ors; AIR 1992 SUPREME COURT 604**". Hence Section 5 of the PITA Act does not apply to customers. Continuation of prosecution in such circumstances will be an abuse of the process of the Court.

18. Therefore, application is allowed in terms of prayer clause -'B'.

19. Rule is made absolute in those terms.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)