

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1279 OF 2018

Jakki @ Zaki Shahanawaz Bardi

.. Petitioner

Versus

The State of Maharashtra

.. Respondent

...

Mr. P.A. Pol with Mr.Sharad Suryawanshi and Mr.Ranjit Hatkar
i/b Pol Legal Juris for the petitioner

Mr.S.R. Agarkar, APP for the State.

PSI Shinde from Bhiwandi City police station present.

CORAM: BHARATI DANGRE, J.

DATED : 30th AUGUST, 2023

P.C:-

1 The applicant before me face charge for allowing the premises owned by him to be used as a brothel, an act which is punishable under Section 3 of the The Immoral Trafficking (Prevention) Act, 1956 (for short 'The PITA Act')

On being arraigned as an accused in C.R.No.I-274 of 2014 registered with Bhiwandi City police station, Mumbai which invoked Sections 366(A), 370(1), 372, 373 of the IPC and Section 4, 6 and 14 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Sections 3, 4, 5, 6, 7 and 9 of the PITA Act, and on being arrested, he approached

this Court and on 27/4/2015, was released on bail, by recording that there is no material in the entire charge-sheet to show that the applicant had knowledge about the prostitution activities ongoing in his premises, which was rented out to the co-accused Najma Khan.

2 In the wake of insufficient material to sustain conviction against him, the applicant approached the Special Judge under the POCSO Act, by filing an application under Section 227 of Cr.P.C seeking a discharge on the very premise that he cannot be charged under Section 3, as the material in the charge-sheet is not sufficient to sustain a conviction under the provision, as the prosecution has failed to establish that he had knowledge that the co-accused is carrying out the activity of prostitution in the said premises and there is also no evidence to depict that he had knowledge, that the premises rented out, were to be used for the purpose of prostitution.

His application was rejected on 16/8/2017, by recording existence of prima facie material, to subject him to trial.

3 Heard learned counsel for the petitioner and learned APP for the State.

I have been taken through the charge-sheet and in particular, two statements being, the statement of one Yellappa recorded on 23/10/2014 and another one, of a woman, allegedly involved in Flesh Trade.

As per Yellappa, co-accused no.1 Najma was engaged in flesh trade, and she bought two minor girls for the said purpose and hence, he asked her to vacate the premises. He assisted her in finding alternate premises in the neighborhood and this one belonged to the present petitioner who agreed to lease, it out on the monthly rent of Rs.2,000/-. As per the witness, he informed the applicant that the accused no.1 has two minor girls with her, but he responded by saying that he need not interfere in that aspect.

4 Reading of this, by no stretch of imagination can lead to an inference that the two minor girls with accused no.1 were being intended for flesh trade or prostitution.

5 Another statement in the charge-sheet is of one Mumtaz Rafiq Shaikh, who has stated that she was involved in flesh trade and she had taken a room on rent from Neela, and she used to pay rent to her and thereafter, the rent was paid by her to the present petitioner.

Careful reading of the said statement also nowhere establish that the applicant had knowledge, that the prohibited activity of prostitution was being carried out in the said room.

6 The raid was conducted on 17/10/2014 in the room which was occupied by accused no.1 and two minor girls came to be rescued and the accusation faced by the applicant is, he is the owner of the said room.

The prosecution can sustain its conviction under Section 3(2)(b) provided it is established that as a owner/lessor or landlord of the premises, he has let out the same or any part thereof, with a knowledge that it is intended to be used as a brothel or he is willfully a party to the use of such premises or any part thereof as a brothel.

Sub-section (2A) of Section 3 which contemplate a presumption for knowledge as contemplated under sub-section (a) and (b) of sub-section (2), shall come into picture only when there is a compliance of clause (a) and (b).

The legislative intent in prescribing punishment for keeping a brothel or allowing the premises to be used as a brothel necessarily involve knowledge on part of the person who is a tenant, lessee, occupier or in charge of premises on one hand or being a owner, lessor or landlord on the other, that while giving the premises on rent, that they are intended to be used as a brothel, or he is willfully a party to the use of such premises.

In absence of the ingredients of the said Section being made out and since on perusal of the material in the charge-sheet, what the prosecution intend to rely upon, for establishing the said charge are the two statements to which I had made reference as above, the Special POCSO Judge, in my considered opinion, has failed to appreciate the requirements of law, and in particular,

Section 3 of the PITA Act and has erred in refusing to discharge the applicant.

7 At the stage of discharge, a *prima facie* view is expected on perusal of the material that is compiled in the charge-sheet and to ascertain whether it is sufficient, to sustain conviction of an accused for the charge which he faces, and in the present case, since the material fall short of such an inference, the impugned order is liable to be quashed and set aside.

As a sequel, the Petition deserve to be allowed by quashing and setting aside of the order dated 16/8/2017 passed by the learned Special Judge, Sessions Court at Thane, and the applicant is discharged u/s. 366(A), 370(1), 372, 373 of IPC r/w Section 4, 6, 14 of the Protection of Children from Sexual Offences Act, 2012 r/w u/s. 3, 4, 5, 6, 7 and 9 of the Immoral Trafficking (Prevention) Act (PITA), Section 3(1), 3(2), 3(3), 14 of the Foreigners Act, 1946 and under Section 12(1) of the Passport Rules 1980, as continuation of the proceedings, would amount to grave injustice and abuse of process of law.

(SMT. BHARATI DANGRE, J.)