

GRM

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

CRIMINAL WRIT PETITION NO. 538 OF 2021

Shri. Pavan Anil Nirale ... Petitioner

V/s.

The State of Maharashtra ... Respondent

Mr. Sugandh Deshmukh a/w Irvin D'Souza, Adv. for the Petitioner.

Mr. A. R. Patil, APP for the State/Respondent.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 31, 2023

P.C. :

The challenge in this writ petition is to the order dated 25/02/2020 passed by the Court of Additional Sessions Judge, Baramati, District-Pune below Exhibit-90 in Sessions Case No. 103 of 2013 in connection with the Crime No. 10 of 2012 registered for the offences punishable under Section 366A, 366B, 372 & 373 of the Indian Penal Code, 1860 (for short “**IPC**”) and under Sections 3, 4, 5, 7 & 8 of the Immoral Traffic (Prevention) Act, 1956 (for short “**ITPA**”), which was the application moved by the petitioner herein (original accused no. 12) for discharge from the Sessions Case. The learned Judge partly allowed the application granting the petitioner discharge from the offence punishable under Sections 3, 4, 5, 7 & 8 of ITPA. The learned Judge however refused to grant the petitioner discharge from the offence punishable under Section 373 of IPC. The petitioner is therefore before this Court.

2. The State has not challenged the order granting the petitioner discharge from the offences punishable under Sections 3, 4, 5, 7 & 8 of ITPA.

3. The prosecution case, in short, is as follows :-

a. The First Information Report (for short “**FIR**”) is lodged by the Police Sub-Inspector attached to Vadgaon Nimbalkar Police Station, Baramati, District-Pune. Pursuant to tip-off, the raid was effected on three lodges viz. Shivtara, Shivanand and Shivkailash at Morgaon, Taluka-Baramati. During the raid, it was found that prostitution-cum-brothel was being run in all three lodges. Some male persons and about 8-10 women (including minors) were found in the said raid. It was also found that money changed hands for flesh trade. Decoy customers were therefore employed.

4. In this matter, we are concerned with the raid at Shivtara Lodge, Morgaon. It has been alleged in the FIR that the present petitioner was found with one X (name not disclosed) in Room No. 104. The panchanama of entire exercise was drawn. The statements of persons acquainted with the facts and circumstances were recorded. On completion of the investigation, the charge-sheet came to be filed.

5. As stated above, the petitioner herein is accused no. 12 in the case. From perusal of the police-papers, it appears that the petitioner had been there as one of the customers. He is not alleged to be a pimp or brothel keeper. Admittedly, he has been granted discharge from the offences punishable under Sections 3,

4, 5, 7 & 8 of ITPA. The State has not challenged the said order. The learned Sessions Judge has however found that there is material to frame charge against the petitioner for the offence punishable under Section 373 of IPC.

6. Heard.

7. Learned Advocate for the petitioner would submit that if the case of prosecution is taken as it is, no ingredients of offence punishable under Section 373 of IPC are made out. He therefore urged for allowing the petition.

8. Learned APP would on the other hand support the impugned order.

9. Considered the submissions advanced. Perused the police-papers relied on.

10. Pursuant to the tip-off, raid was conducted on three lodges at Morgaon. The petitioner was found in one of the rooms i.e. Room No. 104 with one lady. In the FIR the age of said lady is given as '18 years'. The statement of that lady is also on record. She stated to have been of 18 years of age at the material time. Her statement (Exhibit-F at page 59) indicate that she on her own had been to the said lodge to indulge in prostitution. Her statement conspicuously silent to state that she was in the company of present petitioner in the room as alleged in the FIR. Then there is a statement of another girl, who claims to be 20 years of age at the

relevant time. It is in her statement that she was emotionally involved with the petitioner herein. Both of them had therefore been to the said lodge. They were in Room No. 106. The police effected raid and caught her and her friend (petitioner herein). Her statement further suggests that she had willingly joined the petitioner to the lodge.

11. The order impugned herein records that the petitioner was found with a girl, who was below 18 years of age. The Trial Court relied on the age determination by medical expert. Her age having been determined on medical examination, the Trial Court therefore found it to be the case to proceed against the petitioner for the offence punishable under Section 373 of IPC. It is therefore necessary to advert to Section 373 of IPC, which reads thus,

“373. Buying minor for purposes of prostitution, etc. — Whoever buys, hires or otherwise obtains possession of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[Explanation I. — Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II. — “Illicit intercourse” has the same

meaning as in section 372].

Classification of Offence.—The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.”

12. The case of prosecution is very hazy. In the FIR itself, the petitioner was alleged to have been in the company of a girl, who was 18 years of age. Very girl in her first statement, gave her age as ‘18 years’. It appears that then her age is shown to be 15 years. The basis therefore is said to be the medical examination. The statement of this girl did not speak anything about having been in the company of petitioner. On the contrary, there is another statement of a girl, who has stated that she was emotionally involved with the petitioner and both of them had therefore been to the said lodge. She claimed to be 20 years of age. As such, the scrutiny of police-papers so far as against the petitioner herein is concerned, in noway suggest him to have even a *prima-facie* indulge in the offence punishable under Section 373 of IPC.

13. The Court of Judicial Magistrate First Class, who had committed the case, did not attribute Section 373 of IPC against the petitioner.

14. In the totality of the facts and circumstances of the case, this Court finds the prosecution material to be insufficient to frame charge against the petitioner for the offence punishable under Section 373 of IPC. The Court therefore finds it a fit case to interfere with the order impugned herein.

15. In the result, the petition succeeds in the terms of prayer clause (A).

16. Criminal Writ Petition No. 538/2021 stands disposed of accordingly.

(R. G. AVACHAT, J.)