

**CRR-1890-2023 (O&M) and
CRR-1902-2023**

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2023:PHHC:124917**

115+116

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 12.09.2023

(I) CRR-1890-2023 (O&M)

DEVENDER

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

(II) CRR-1902-2023

ANKIT

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

**Present:- Mr. Ashwani Gaur, Advocate
for the petitioner in CRR-1890-2023.**

**Mr. S. K. Jindal, Advocate
for the petitioner in CRR-1902-2023.**

JASGURPREET SINGH PURI, J.

CRM-36064-2023 in CRR-1890-2023

Prayer in this application is for placing on record the copy of orders passed by this Court in CRM-M-31935-2021, titled as Rajender Kaushik versus State of Haryana; in CRM-M-38134-2021, titled as Ankit versus State of

Haryana and in CRM-M-31158-2022, tilted as Nazakat versus State of Haryana as Annexures P-14 to P-16.

For the reasons mentioned in the application, the same is allowed. Annexures P-14 to P-16 are taken on record, subject to all just exceptions.

Both cases

1. Both these criminal revision petitions are taken up together for final disposal with the consent of learned counsel for the petitioners in both the cases since they arise out of the same order passed by the learned Additional Sessions Judge, Sonipat on 04.08.2023.

2. The aforesaid impugned order dated 04.08.2023 was passed vide which both the petitioners in both the petitions have been directed to be charge-sheeted for offences punishable under Sections 370, 120-B of the IPC and Sections 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956. By the aforesaid order, the prayer of both the petitioners for discharge was rejected. A FIR No.224 dated 08.07.2021 was registered under Sections 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956; Sections 370, 120-B of the IPC; Sections 3 and 12 of the Passports Act, 1967 and Section 14 of the Foreigners Act, 1946 at Police Station Murthal, District Sonipat against the petitioners. The aforesaid FIR was registered on the basis of a secret information which was received by the concerned Deputy Superintendent of Police from the Chief Minister Flying Squad to the effect that at Happy Dhaba, Raja Dhaba and Hotel Westin, G. T. Road, Murthal, a business of prostitution is going on and if an immediate raid is conducted, then the ladies and the pimps involved in the prostitution can be apprehended. On the basis of aforesaid secret information,

the SDM, namely, Shashi Vasundhra and the District Child Protection Officer, namely, Ritu were appointed as Duty Magistrates after contacting the Deputy Commissioner, Sonipat. Thereafter, Inspector/SHO of the Women Police Station, Sonipat, namely, Parmila and DI/Inspector, namely, Dilbag Singh were made aware of the secret information and they were requested to reach at Police Station Murthal. The DSP along with his staff reached at Police Station Murthal where SHO/Inspector, namely, Arun Kumar met him. In the meanwhile, the SDM and District Child Protection Officer as Duty Magistrates, Inspector/SHO, Women Police Station, Sonipat and DI/Inspector Dilbag Singh also came present in the Police Station and they were made aware of the secret information. Thereafter, three different teams were constituted in view of the fact that a raid was to be conducted at three dhabas/hotels and these dhabas/hotels were adjacent to each other. First team i.e. team No.1 conducted a raid at Happy Dhaba. Team No.2 conducted a raid at Raja Dhaba and team No.3 conducted a raid at Westin Hotel. At all the aforesaid different three places, decoy witnesses were made and currency was marked by the police officials which were thereafter recovered from the accused. In the FIR itself, entire details have been mentioned with regard to the procedure adopted with respect to all the aforesaid three dhabas/hotels.

3. Criminal revision petition filed by Devender (petitioner in CRR-1890-2023) pertains to Happy Dhaba and criminal revision petition filed by Ankit (petitioner in CRR-1902-2023) pertains to Westin Hotel. The third dhaba i.e. Raja Dhaba is not the subject matter of the present petitions.

4. Learned counsel appearing on behalf of Devender (petitioner in CRR-1890-2023) submitted that so far as the present petition is concerned, petitioner-Devender had no role to play and he has been falsely implicated in the present case only because of gurdge in the Police Department. He further submitted that the petitioner is working in Haryana Police STF and his name was nominated on the basis of disclosure statement of the other co-accused which is not admissible in evidence and also there is no material available with the prosecution to connect the petitioner with the present offence and therefore so far as petitioner-Devender is concerned, the charges framed against him were erroneous and are liable to be set aside. He further submitted that as per the prosecution, there were some telephonic calls between the petitioner and the other co-accused, namely, Ombir but the mere fact that the petitioner and the aforesaid Ombir had exchanged phone calls would not raise any presumption that the petitioner was also connected with the present offence. He also submitted that even as per the FIR, from Happy Dhaba which is stated to be managed by aforesaid Ombir along with the present petitioner, four girls were recovered while sitting on a bed of room No.106 of the said Dhaba, whereas as per the disclosure statements of Ombir, Hitesh and Rohit, three different girls were found to be recovered from the aforesaid room No.106 while sitting on the bed and therefore the case of the prosecution was doubtful. Furthermore, from the aforesaid disclosure statements there is nothing to suggest that the aforesaid girls who were recovered from aforesaid room No.106 were in a compromising position with any man/customer and therefore the ingredients of Sections 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 and Sections 370, 120-B of

the IPC are not fulfilled and no offence is made out against the present petitioner. He also submitted that the statements of some of the girls have not been recorded by the police and they recorded the statements of only three girls and therefore there is no incriminating evidence to show that the said dhaba/hotel was being used as a brothel. He further submitted that a currency note of Rs.500/- which was given by decoy witness was not recovered from the petitioner but was recovered from the aforesaid co-accused, namely, Ombir but the only allegation against the petitioner is that he was instrumental in bringing the girls for the purpose of prostitution. He further submitted that as per the disclosure statement of another co-accused, namely, Abdus Samad Shahdai @ Iqbal Khan, he has stated that he used to arrange the girls and used to talk to other co-accused, namely, Ankit and Ombir by going to their dhaba/hotel and they agreed that they are ready to buy girls for prostitution through him and he has set different price per girl per night. He further submitted that in the disclosure statement of aforesaid Abdus Samad Shahdai @ Iqbal Khan, the name of petitioner-Devender has not surfaced and therefore the implication of the petitioner in the present case was a wrongful implication. He referred to a judgment of Hon'ble Supreme Court in **Union of India versus Prafulla Kumar Samal and another, 1979 (3) SCC 4** to contend that at the time of framing of the charges, the Court has a power of sift and weigh the evidence for a limited purpose of finding out whether or not the *prima facie* case is made out against the accused or not.

5. Learned counsel appearing on behalf of Ankit (petitioner in CRR-1902-2023) submitted that although the present criminal revision petition

is preferred against the order dated 04.08.2023 passed by the learned Additional Sessions Judge, Sonipat but the prayer in the present petition is limited only to the extent that no *prima facie* offence under Sections 370 and 120-B of the IPC is made out against the petitioner Ankit and he has been wrongly charge-sheeted under the aforesaid Sections. He further submitted that the extent of his limited prayer is also so mentioned in para No.1 of the grounds of revision. He further submitted that so far as petitioner-Ankit is concerned, the allegations against him were that he was a Manager of aforesaid Westin Hotel and a currency note of Rs.500/- was recovered from him which was given to him by the decoy witness. He also submitted that during the raid, no illegal activity was detected and there is nothing on the record to show that other persons who were arrested including the ladies were either indulging in immoral activity or they were preparing to do so. He further submitted that out of 12 females who were accused in the present case, 9 have been discharged by the police and the remaining three were discharged under the Immoral Traffic (Prevention) Act, 1956 but they were still charged for the violation of the Passports Act, 1967 and the Foreigners Act 1946. He referred to the provisions of Section 370 of the IPC to contend that the aforesaid Section deals with trafficking of persons and it will apply only when a person indulges in trafficking of a person for the purpose of exploitation, recruits, transports, harbours, transfers or receives a person or persons by using threats or using force or any other form of coercion or by abduction or by practising fraud or deception or by abuse of power or by inducement. The expression "exploitation" has also been explained in explanation 1 and it states that it shall include any act of physical exploitation

or any form of sexual exploitation, slavery or practices similar to slavery, servitude or the forced removal of organs. He also submitted that in the confessional statements/disclosure statements of three girls, they have stated that they of their own used to come for earning money and have not been compelled by anyone for prostitution or their exploitation on any account was done by anyone. He further submitted that in view of the statements made by the girls which were found on the spot that they came voluntarily for earning money, the offence under Section 370 of the IPC was not made out and therefore the order dated 04.08.2023 qua petitioner-Ankit is liable to be set aside qua Sections 370 and 120-B of the IPC. He referred to a judgment of Andhra Pradesh High Court in **Kumma Mani Kumar and 2 others versus The State of Andhra Pradesh, Criminal Petition No.4828 of 2022**, decided on **27.09.2022** and a judgment of Bombay High Court in **Jahangir Arshad Mandol versus The State of Maharashtra, Criminal Appeal No.571 of 2017** with **Criminal Appeal No.985 of 2018**, decided on **19.08.2020** to contend that in such like situation, the offence under Section 370 of the IPC is not made out.

6. I have heard the learned counsel for the petitioners in both the cases.

7. The FIR was lodged on the basis of secret information which was received by the Deputy Superintendent of Police from the Chief Minister Flying Squad and consequently, the Deputy Commissioner, Sonipat constituted three teams for three different hotels/dhabas and appointed Duty Magistrates for conducting raids. Various other officers were also associated in this regard and simultaneous raids were conducted. The allegations against Devender

(petitioner in CRR-1890-2023) were that as per disclosure statement of Ombir, who had taken said Happy Dhaba on rent from its owners stated that he along with petitioner Devender and some more persons were procuring girls for the purpose of conducting the business of prostitution. Petitioner-Devender is stated to be posted in Haryana Police STF. The name of petitioner-Devender finds mentioned in the FIR itself. Aforesaid co-accused Ombir was caught along with Rs.500/- currency note which was a numbered note and given to him by the decoy witness. During the course of investigation, different statements of other accused were also recorded. The aforesaid co-accused Ombir specifically stated in his disclosure statement that petitioner-Devender, who works in Haryana Police STF, Sonipat comes to the dhaba almost everyday and he brings girls to dhaba for prostitution and they provide girls or women to the customers who come to their dhaba for Rs.1500/- to Rs.2000/- from which they give half of the rupees to the girls who come for prostitution and then the owners and petitioner Devender gives him his share. The girls are also brought through aforesaid co-accused, namely, Abdus Samad Shahdai @ Iqbal Khan which included the girls from foreign country as well. Apart from the disclosure statement of the aforesaid Ombir, there are two more disclosure statements of the other two co-accused, namely, Hitesh and Rohit who were also working in the same dhaba i.e. Happy Dhaba and who also named the present petitioner-Devender by specifically stating that he comes to dhaba everyday and he gives them their share. Apart from the above, even as per the learned counsel for petitioner-Devender and also in the petition itself, it is so stated that there were telephone calls between Ombir and Devender and an argument has been raised by the

learned counsel for petitioner-Devender that disclosure statement of co-accused and telephone calls is not a sufficient material to frame charges against the petitioner. However, the learned Additional Sessions Judge, Sonipat while rejecting the prayer for discharge and ordering framing of the charges against the petitioners after taking into account the factual position observed that at the stage of the framing of charges, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate the evidence and arrive at a conclusion and at the time of the framing of the charges, evidence cannot be weighed and therefore the petitioners cannot be discharged at this stage. The learned Additional Sessions Judge, Sonipat also referred to judgment of Hon'ble Supreme Court in **Kanti Bhandra Shahd and another versus State of West Bengal, 2000 (1) SCC 272** and observed that as per the aforesaid judgment, there is no legal requirement that the trial Court should write an order showing the reasons for framing of the charges. Therefore, keeping in view the *prima facie* evidence available on file, charges were directed to be framed against the petitioners.

8. With regard to the judgment relied by the learned counsel for petitioner-Devender in CRR-1890-2023 in **Prafulla Kumar Samal's case (supra)**, the proposition of law with regard to the framing of the charges is no longer *res integra*. Even in the aforesaid judgment, the Hon'ble Supreme Court has observed that where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained then the Court will be fully justified in framing of charge and proceeding with the trial.

9. So far as the arguments which have been raised by the learned counsel for petitioner-Ankit in CRR-1902-2023 are concerned, his prayer is limited only to the extent of quashing of the charges under Section 370 and 120-B of the IPC against the petitioner. The main thrust put by the learned counsel for petitioner-Ankit in the present case was that the ingredients of Section 370 of the IPC were not fulfilled. So far as the role of the petitioner-Ankit is concerned, as per the allegations, he was the Manager of Westin Hotel and currency note of Rs.500/- was recovered from him which was given to him by the decoy witness. He submitted that three girls whose statements were recorded in the present case had stated that they were coming to the hotel of their own will for earning money and were not compelled by anybody for prostitution and therefore so far as petitioner-Ankit is concerned, since there was no force or coercion by anybody, the ingredients of Section 370 of the IPC were not fulfilled.

10. However, a perusal of Section 370 of the IPC would show that it deals with trafficking of persons. A plain reading of aforesaid provision would show that as per Sub-Section 1, whoever, for the purpose of exploitation, recruits, transports, harbours, transfers or receives a person or persons, by using threats or using force or any other form of coercion or by abduction or by practising fraud or deception or by abuse of power or by inducement including the giving or receiving of payments for benefits, in order to achieve the consent of any person having control of other person recruited, transported, harboured, transferred or received, commits the offence of trafficking. The expression “exploitation” has also been defined in Explanation 1 to include any act of

physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. Thereafter, Explanation 2 provides that the consent of the victim is immaterial in determination of the offence of trafficking. Petitioner-Ankit in CRR-1902-2023 was stated to be the Manager of the Westin Hotel from whom currency note of Rs.500/- was recovered which was given to him by the decoy witness. Some girls were also found, out of which some were discharged later on by the police. It is not a case where the victims/girls have approached this Court for setting aside of the order of framing of charges under Section 370 of the IPC. It is a case where the Manager of the said hotel from whom the money was recovered has approached this Court by filing of the present revision petition. Therefore, it cannot be said that the ingredients of Section 370 of the IPC are *prima facie* not applicable to the petitioner-Ankit.

11. Reference made by the learned counsel for petitioner-Ankit in CRR-1902-2023 to two judgments as aforesaid i.e. in **Kumma Mani Kumar's case (supra)** and **Jahangir Arshad Mandol's case (supra)** also need to be considered. In **Kumma Mani Kumar's case (supra)**, the Andhra Pradesh High Court was dealing with the petition filed by the customers/victims and qua them provisions under Section 370 of the IPC were quashed and therefore the present petition is totally distinguished from the aforesaid judgment because here in the present case, the petitioners are not the victims/customers but the person who was the Manager of the hotel from whom there was a recovery of currency note of Rs.500/- given to him by the decoy witness. So far as the judgment of Bombay High Court in **Jahangir Arshad Mandol's case (supra)** is concerned,

in that case it was established on the basis of evidence that the women victims were not present on the spot and that the spot of incident was used as a brothel or that they were detained against their wishes or were exploited by using force, coercion or abduction by practising fraud. Therefore, the aforesaid judgment is also distinguished from the facts and circumstances of the present case.

12. The Hon'ble Supreme Court in **Bhawna Bai versus Ghanshyam and others, 2020 (2) SCC 217** discussed the law with regard to the framing of the charges. The relevant portion is reproduced as under:-

“13. Though the circumstances alleged in the charge-sheet are to be established during the trial by adducing the evidence, the allegations in the charge-sheet show a prima facie case against the accused-Respondents 1 and 2. The circumstances alleged by the prosecution indicate that there are sufficient grounds for proceedings against the accused. At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

13. In view of the aforesaid facts and circumstances, this Court is of the considered view that there is no scope for interference in the order passed by the learned Additional Sessions Judge, Sonipat dated 04.08.2023 in both the revision petitions. There is neither any illegality nor perversity in the impugned order and charges have been framed on the basis of *prima facie* evidence

available on the record and therefore both the criminal revision petitions deserved to be dismissed.

14. Consequently, both the criminal revision petitions are hereby dismissed.

15. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petitions only.

12.09.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No