



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 581 OF 2021**

1] Tausif Ahmed S/o Amjad Ullah Siddiqui

2] Nasrulla S/o. Niyamatulla

.. Applicants

Versus

1] The State of Maharashtra,  
Through Police Inspector,  
Police Station, Osmanpura,  
Aurangabad, Tq. & Dist. Aurangabad

2] Manda Laxmanrao Samse,  
Age : 36 years, Occu : Service,  
Police Station, Osmanpura,  
Aurangabad, Tq. And Dist. Aurangabad

.. Respondents

...  
Advocate for applicant : Mr. S.R. Bagal h/f. Mr. B.N. Gadegaonkar  
APP for the respondent – State : Ms. P.R. Bharaswadkar  
...

**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 15 APRIL 2024  
PRONOUNCED ON : 25 APRIL 2024**

**ORDER (MANGESH S. PATIL, J.) :**

This is an application under section 482 of the Code of Criminal Procedure for quashment of crime no. 238 of 2020 registered with Osmanpura Police Station, District – Aurangabad for the offences punishable under section 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act (hereinafter '**PITA**').

2. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. Shortly stated the allegations as can be discerned from the chargesheet, are to the effect that on a secret information received that a particular place was being used as a brothel, the police party arranged a raid on 17-12-2020. One decoy was sent. Raid was effected. Panchnama was conducted wherein the money paid by the decoy was recovered. The victims were rescued. Other accused were arrested including the present applicants. It is alleged that on enquiry, the victims told about having been confined and made to indulge in prostitution and the co-accused were earning therefrom. As far as the present applicants are concerned, it is alleged that both of them were sitting in a hall and were customers.

4. The learned advocate for the applicants would submit that accepting the allegations at the face value, the applicants are not being involved either as brothel keepers or having engaged the victims in prostitution. They are being stated to be the customers. This Court has consistently held that the provisions of the PITA Act do not take within its sweep the customers like the applicants. He would point out that even if the things are to be straight, even according to the prosecution the applicants were merely sitting in a hall and were not either engaged in the sex or were found inside any cabin or room with

any victim. He would, therefore, submit that it would be gross abuse of the process of the law to make the applicants face the prosecution. He would refer to the decision of the division benches of this Court in the matters of ***Eimn Abdulamir Jassem Al-Allaf Vs. State of Maharashtra*** (Criminal Writ Petition no. 564 of 2018 decided on 01-11-2018) and ***Mohammad Junded Mohammad Rauf Vs. State of Maharashtra*** (Criminal Application no. 1459 of 2018 decided on 04-02-2020).

5. Learned advocate would submit that even the decision in the matter of ***Mohammad Juned Mohammad Rauf*** (supra) examines the scope and ambit of invoking the inherent powers in the light of provisions contained in section 370 of the Indian Penal Code. He would, therefore, submit that the application be allowed and the crime and criminal case to the extent of the applicants be quashed and set aside.

6. Per contra, the learned APP would submit that powers contained in section 482 of the Code of Criminal Procedure may not be exercised in the peculiar facts and circumstances of the case, when the applicants were actually found present in the brothel and when serious allegations under the PITA Act are attributed to the co-accused.

7. The learned APP would further submit that irrespective of the fact that the provisions of PITA Act are not applicable to the applicants being the customers, the trial Court would have ample powers to invoke section 370 and 370A of the Indian Penal Code, as has been observed by a division bench of this Court in the matter of ***Akib Akram Khan and another V. State of Maharashtra and another; AIROnline 2019 Bom 1361.***

8. We have considered the rival submissions and perused the chargesheet. At the outset, it is necessary to note that as far as the provisions of PITA Act and their interpretation is concerned, co-ordinate division benches of this Court have been consistent in holding that those would not take within its sweep the persons who are present in the brothel as customers. All the three division benches in the aforementioned matters are unanimous to this extent. We need not, therefore, delve into this aspect any longer.

9. The issue that remains to be considered is as to if the applicants, in their capacity as customers, can be prosecuted for commission of crime under section 370 or 370A of the Indian Penal Code.

10. In the matter of ***Eimn Abdulamir*** (supra) which is decided on 01-11-2018, the issue was not considered from this angle and the

application was allowed and the crime was quashed to the extent of the applicant who was also a similarly placed like the present applicants. The question of applicability of section 370 or 370A of the Indian Penal Code was not considered. In the matter of **Akib Akram Khan** (supra) decided on 31-07-2019, the division bench for the first time discussed the scope and ambit of section 370 of the Indian Penal Code and by observing that a customer to whom the provisions of PITA Act are not applicable, could be prosecuted under section 370 of the Indian Penal Code and rejected the application.

11. In the matter of **Mohammad Juned** (supra), the aspect as to applicability of section 370 of the Indian Penal Code to a customer in an offence under PITA Act was expressly considered since the applicant therein was even prosecuted under that section. The division bench, by referring to the decision in the matter of **Eimn Abdulamir** (supra), **Shashank Yashdeep Khanna V. State of Maharashtra** (Criminal Application no. 1081 of 2018) and **Derek Ellias Machado and others Vs. The State of Maharashtra** (Criminal Application no. 1039 of 2018) allowed the application and quashed the prosecution. However, the decision in the matter of **Akib Akram Khan** (supra) was not cited before the division bench. Incidentally, all the three matters i.e. **Eimn Abdulamir**, **Akib Akram Khan** and **Mohammad Juned**

(supra) were decided by the division benches to which esteemed Justice T.V. Nalawade (Retd.) was a member.

12. The afore-mentioned narration demonstrates that the division bench which decided **Eimn Abdulamir** had not considered applicability of section 370 of the Indian Penal Code. The decision in the matter of **Akib Akram Khan** was the first decision of the division bench wherein specific reason was assigned as to why the division bench was not ready to quash the crime by expressly assigning the reasons as to how section 370 of the Indian Penal Code could be applicable to a person found in a brothel as a customer.

13. True it is that the division bench in the matter of **Mohammad Juned** should have been but was not pointed out the decision in the matter of **Akib Akram Khan** and even though section 370 was expressly invoked by the prosecution against the applicant therein but the crime was quashed solely on the ground that the provision of PITA Act were not applicable to the applicant who was a customer.

14. Therefore, the enquiry in the present matter would be limited to the extent of ascertaining if section 370 or 370A of IPC could be invoked against the present applicants. Needless to state that if we have to take a contrary view than that was taken in **Akib Akram Khan**

the only course available to us would be to make a reference to a larger bench.

15. Bearing in mind the afore-mentioned circumstances, in our considered view, the decision in the matter of **Akib Akram Khan** assigns sufficient and cogent reasons and demonstrate in a lucid manner as to how even a customer against whom provisions of PITA Act cannot be invoked could still be prosecuted under section 370 of the Indian Penal Code. The division bench had referred to and relied upon the observations of the learned single judge of the Gujarat High Court who decided **Vinod V. State of Gujarat and others; MANU/GJ/0771/2017**. Relevant paragraphs of **Akib Akram Khan** read as under :-

*"4. In the present matter, the learned APP submitted that in the past, due to oversight, submission was not made for the State that amended provision of Section 370 of the Indian Penal Code can be used against the clients or customers of brothel house. He submitted that the provision of Section 370(1) sixthly of the Indian Penal Code is applicable. Section 370 of the Indian Penal Code runs as under:*

**"370. Trafficking of person.** (1) *Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by -*

*First.- using threats, or*

*Secondly.- using force, or any other form of coercion, or*

*Thirdly.- by abduction, or*

*Fourthly.- by practising fraud, or deception, or*

*Fifthly.- by abuse of power, or*

*Sixthly.- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.*

*Explanation 1.- The expression "exploitation" 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.*

*Explanation 2.- The consent of the victim is immaterial in determination of the offence of trafficking.*

*(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.*

*(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.*

*(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.*

*(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.*

*(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*

*(7) When a public servant or a police officer is involved in the trafficking of any person then such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."*

5. The learned APP placed reliance on the observations made by the learned Single Judge of Gujarat High Court in the case reported as MANU/GJ/0771/2017 (Vinod Vs. State of Gujarat and Ors.) decided on 5th May, 2017 in Criminal Misc. Application (For Quashing and Set Aside FIR/ Order) No.8156 of 2017. The learned Single Judge has made observations that though the provisions of Sections 3, 4, 5 and 6 of PITA Act cannot be used against the customer, provision of Section 370 of the Indian Penal Code, **which came to be amended in the year 2013.** The observations are at paragraphs 18 to 25 and they are as under:

18. Prior to substitution by Section 8 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3.2.2013), Section 370 stood as under :

"Section 370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. Amendment of 2013. Vide the Criminal Law (Amendment) Act 2013 (Act 13 of 2013), the entire section has been changed so as to enlarge the scope of the offence and include within its purview not just the mischief of slavery, but trafficking in general of minors as also adults, and also forced or bonded labour, prostitution, organ transplantation and to some extent child-marriages.

20. For the purposes of this new offence, an offender has been classified into 5 categories, thus covering every aspect of the commission of such offences. A person can be held liable within the mischief of this offence if he either (i) recruits, or (ii) transports, (iii) harbours, (iv) transfers, or (v) receives, a person or persons.

21. 'Exploitation', meaning of. - The purposes of exploitation is at the core of this new offence of trafficking. As defined herein, this exploitation can be deciphered from either of the following course of conduct -

(i) use of threats upon the victim who is being trafficked;

(ii) use of force, or any other form of coercion upon the victim who is being trafficked;

(iii) by means of abduction of the victim who is being trafficked;

*(iv) by practising fraud, or deception upon the victim who is being trafficked;*

*(v) by abuse of power upon the victim who is being trafficked;*

*(vi) by inducement of the victim who is being trafficked, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received.*

*22. Explanation (1) added to this section, further adds to the meaning of 'exploitation' any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.*

*23. Consent of victim.- Explanation (2) ousts the possibility of an accused taking the defence of consent of victim to any act of physical exploitation or other form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.*

*24. Thus, the plain reading of Section 370 of the Indian Penal Code makes it clear that the same has been enacted by the Legislature with the avowed object of preventing sexual exploitation of a girl or woman. The provision makes it very clear that whoever, for the purpose of exploitation, recruits, transports, harbours, transfers or receives any girl or woman for the purpose of sexual exploitation, such person is guilty of the offence under Section 370 of the Indian Penal Code. The provision also makes it very clear that the consent of the victim is not material in determination of the offence of traffic. The expression 'exploitation' includes any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.*

*25. I find it extremely difficult to take the view that a customer at a brothel is not covered within the provision of Section 370 of the Indian Penal Code. A customer at a brothel could be said to receive the victim. I see no good reason why the customer should be kept out of Section 370 of the Indian Penal Code."*

*6. This Court holds for the same reasons that the amended provision of Section 370 of the Indian Penal Code can be used against the customer. The submissions made by the learned counsel for Applicants that Verma Committee report*

*was given after introducing the aforesaid amendment and the Verma Committee has observed that sex workers, who were engaged in prostitution of their own volition, are not covered under Section 370 of the Indian Penal Code, cannot be accepted at this stage. We are considering specifically the amended provision and that needs to be read as it is."*

16. We are in respectful agreement with the observations of the division bench but would be inclined to add that apart from section 370 of the Indian Penal Code even a customer like the present applicants, for the selfsame reasons, can be made to face the prosecution even for section 370A which reads as under:-

**"370-A. Exploitation of a trafficked person. —** (1) *Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.*

(2) *Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine."*

As is evident, section 370 makes punishable trafficking of a person whereas section 370A provides punishment for exploitation of a trafficked person. Consequently, as is observed in the matter of **Akib Akram Khan**, even section 370A was introduced by way of Criminal Law Amendment Act, 2013. The word 'exploitation' as is used in both these provisions would carry the same meaning as defined in explanation to sub-section 1 of section 370. Consequently, a customer found at the brothel at the time of raid against whom the provisions of

PITA Act cannot be invoked, would still be liable for prosecution under section 370 and / or 370A of the Indian Penal Code in the facts and circumstances of the case.

17. True it is that like the situation was in the matter of **Akib Akram Khan**, the applicants are not being chargesheeted for either section 370 or 370A. However, even this fact situation was dealt with by the division bench in the matter of **Akib Akram Khan** in following words:-

*"7. Chargesheet is filed for the offences punishable under Sections 3, 4, 5 and 6 of PITA Act and not for the offence punishable under Section 370 of the Indian Penal Code. Before this Court also, in the past, no submission was made for the State that the provision of Section 370 of the Indian Penal Code can be used against the customers. There is ample power with the Trial Court like power given under Section 311 of the Code of Criminal Procedure and Section 319 of the Code of Criminal Procedure. The persons, who got benefit of aforesaid two orders made by this Court, can be considered by using the provision of Section 319 of the Code of Criminal Procedure and they can be tried for the offence punishable under Section 370 of the Indian Penal Code. Same can be done with the present Applicants. It can be said that charge cannot be framed against the present Applicants for the offences punishable under Sections 3, 4, 5 and 6 of PITA Act, but charge for the offence punishable under Section 370 of the Indian Penal Code can be framed if there is material to make out such case. That scrutiny needs to be done by the Trial Court and at present, it can be said that there is the material to show the presence of Applicants in the brothel house, which was run under different the names like "Anantra Spa" and "Distress Hub" in a big famous mall of Aurangabad. This Court is not going through the contents of complaints, which is self explanatory and showing that brothel house was being run in that place. This Court holds that relief claimed cannot be given in the present matter though charge cannot be framed against the Applicants for the offences punishable under the PITA Act. They will have to go before the Trial Court and it is upto the Trial Court to decide as to whether charge can be framed against them for the offence punishable under*

*Section 370 of the Indian Penal Code, they can be tried for such offence. In the result, the application stands dismissed.”*

18. Indeed, the trial court has ample powers to invoke appropriate sections either while taking cognizance or even at a later stage in the light of the provisions of section 311 and 319 of the Code of Criminal Procedure and even if it would not be possible for the trial court to frame charge against the applicants under the provisions of the PITA Act, still, the decision can be taken as far as applicability of section 370 and 370A of the Indian Penal Code.

19. In view of the afore-mentioned facts and the law, the crime and criminal case cannot be quashed *albeit* the trial Court cannot frame charge against the applicants for the offence under the PITA Act.

20. Criminal Application is, therefore, allowed only partly to the extent discussed herein-above.

**[ SHAILESH P. BRAHME ]**  
**JUDGE**

**[ MANGESH S. PATIL ]**  
**JUDGE**

arp/