

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION (A.P.L.) NO. 591 OF 2012**

|                                 |   |               |
|---------------------------------|---|---------------|
| Dilip Savailal Soni             | ] |               |
| Age : 50 years, Occ. Business   | ] |               |
| R/o. B-801, Shankar Park,       | ] |               |
| Shankar Lane, Kandivali (West), | ] |               |
| Mumbai                          | ] | ... Applicant |

**V/s.**

|                              |   |                |
|------------------------------|---|----------------|
| The State of Maharashtra     | ] |                |
| (At the instance of Oshiwara | ] |                |
| Police Station, Mumbai)      | ] | ... Respondent |

Mr. Ganesh Gole a/w Mr. Ateet Shirodkar for Applicant.  
Mr. J.P. Yagnik, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND  
SHYAM C. CHANDAK, JJ.**

**DATE : 22<sup>nd</sup> MARCH 2024**

**ORAL JUDGMENT (Per : A.S. Gadkari, J.) :-**

1) Applicant in the present Application seeks quashing of C.R. No.13 of 2012 dated 7<sup>th</sup> February 2012, under Sections 3, 4 and 5 of The Immoral Traffic (Prevention) Act, 1956 ("*PITA*" Act) registered with Oshiwara Police Station, Mumbai.

2) Record indicates that, by an Order dated 12<sup>th</sup> February 2013, Rule is issued and interim relief is granted in favour of Applicant.

3) Heard Mr. Gole, learned counsel appearing for Applicant and Mr.Yagnik, learned A.P.P. for Respondent-State. Perused entire record produced before us.

4) Prosecution case in nutshell is that, the Police Officer attached to Social Service Branch, Mumbai Police, received confidential information that, at Panchakarma Massage Center, situated at S.V. Road, Oshiwara, Jogeshwari (West), Mumbai, under the garb of providing massage services, prostitution business was being conducted by its owner and /or other persons. Accordingly, on 7<sup>th</sup> February 2012, after complying with the necessary formalities, bogus customer was sent to the said place. After receipt of predetermined signal from bogus customer, the Police attached to Social Service Branch conducted raid at the said place and found four women allegedly indulging into the vocation of prostitution. The Manager/Conductor of the said Massage Center, Mr. Rajendra B. Khandagale, was also present there. At the time of conducting raid, the Applicant was found with a woman in an objectionable condition in a cabin therein. The age of the said woman is stated to be 29 years in the FIR. After complying with required legal formalities, post raid panchnama was recorded and subsequently, the present crime is registered by Police Head Constable attached to Social Service Branch, Mumbai.

5) Perusal of the FIR itself abundantly makes it clear that, the Police have termed and treated the Applicant as 'customer' of the said

Message Center. At various places in the FIR, the Applicant is termed as “गिहार्ईक” (customer). It is not the allegation against the Applicant that, he procured or induced any of the women present at the said Message Center for the sake of prostitution. It is also not the allegation against Applicant that, he along with the conductor of the said Message Center indulged into any activities as contemplated under Section 5 of the PITA Act. There is no allegation of inducement by the Applicant to any of the women to indulge into the vocation of prostitution. A bare perusal of the FIR would indicate that, all the women (victims), found at the said Message Center were adult and all of them were above the age of 22 years. None of the victims including the woman, with whom the Applicant was allegedly found in an objectionable condition, have stated that, the Applicant forced them to indulge into the vocation of prostitution and was earning his livelihood on the basis of the same.

6) The co-ordinate Bench of this Court at Aurangabad in the case of *Eimn Abdulamir Jassem Al-Allaf Vs. State of Maharashtra, Criminal Writ Petition No.564 of 2018 and other connected Criminal Applications*, decided on 1<sup>st</sup> November 2018, while analyzing the provision of Section 5 of the PITA Act, has held that,

“17. .... In order to bring the case under Section 5 (1) (c) of the Act prosecution should have come with a case that petitioner had taken or attempted to take the

*girls, or causes them to be taken, from one place to another with a view to their carrying on, or being brought up to carry on prostitution. Charge-sheet does not contain such allegations. Now, Section 5 (1) (d) of the Act prescribes that if a 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."*

7) After perusal of the record and particularly the FIR, we are of the considered view that, no offence at all as contemplated under Sections 3, 4 and 5 of the PITA Act *qua* the Applicant herein, is made out by the prosecution.

8) In view of the above, we are of the opinion that, continuation of present proceedings against the Applicant will be sheer abuse of process of law and therefore needs to be quashed.

9) Criminal Application (A.PL.) is accordingly allowed in terms of prayer clause (a). Rule is made absolute.

( SHYAM C. CHANDAK, J. )

( A.S. GADKARI, J. )

RAJESH  
VASANT  
CHITTEWAN

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