



Diksha Rane

13. REVN 347-23.doc

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

CRIMINAL REVISION APPLICATION NO.347/2023

MAHESH VINAYAK PATIL	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Yash Dewal for the applicant.
Smt. S. D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 3, 2024.

ORAL JUDGMENT :

1. Heard learned counsel for the applicant and learned APP for the State.

2. The order dated 25/8/2023 passed by the Additional Sessions Judge, Kalyan, District Thane below application Exhibit 9 rejecting the application for discharge by the present applicant- accused no.5 is under challenge. The applicant had approached the trial Court under Section 227 of the Code of Criminal Procedure, 1973 to discharge him in connection with Sessions Case No.24/2015 arising out of C.R. No.II 56/2014 registered with Manpada Police Station for the offence punishable under Section 370(3) of the

Indian Penal Code and 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (hereafter 'PITA' for short)

3. The prosecution case in brief is as under:-

The First Information Report (FIR) was registered on 29/10/2014. It is alleged in the FIR that on 28/10/2014, at about 8.15 p.m., the police raided 'Ruchi Lodging and Boarding Hotel' run by co-accused. It is alleged that prostitution activities were being carried out in the hotel. At the time of raid, the applicant was found in a room with the victim which according to the prosecution constitutes the offence under the aforesaid sections.

4. The applicant is the accused no.5. The applicant is alleged to be the customer who was found with the victim. The application for discharge is rejected by the trial Court for the following reasons:-

"6. It is settled position of law that while deciding application under Section 227 of the Cr.P.C., the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground to proceed against the accused. In other words, the sufficiency of ground would take within its fold, the nature of evidence recorded by police or the documents produced before the court which ex-facie disclose that there are suspicious circumstances against the applicant-accused so as to frame the charge against him.

7. Perused application, say and record. It appears that there are specific allegations against the applicant-accused about his involvement in the commission of crime. The

charge-sheet has been filed by Investigating Officer after due investigation against the applicant-accused and other co-accused. At this stage, truth and veracity of prosecution evidence, proposes to be adduced cannot be meticulously judged. The prosecution cannot be deprived of its right to prove its case against the applicant-accused as charge sheet has been filed by the investigating officer after due investigation against him. It is not safe, at this stage to deprive the prosecution, in proving its case, on basis of, in spite of direct evidence. The aspect of intention of applicant-accused in committing the alleged offence can be looked into, at the time of full-fledged trial of the case. Under such circumstances, facts of case law and facts of case in hand are different, hence all respect, cited case law is not helpful to applicant-accused. Considering the over all aspect of the case, this court is of view that applicant-accused has not made out case to discharge him from the crime."

5. Heard learned counsel for the applicant and learned APP for the State.

6. As per the case of the prosecution, the applicant is a customer. Learned APP submitted that the concerned police officials of the raiding party have clearly stated that when the raid was conducted, the applicant was found in one of the rooms with a woman who is named in the panchanama. It is submitted that the victim has clearly stated to the police officials that she is indulging in activities which constitutes an offence under PITA as per the instructions of the co-accused and from the remuneration received, some part of it is retained by the owner of the lodge as a commission. Learned APP submitted that the victim was

found with cash of Rs.250/-.

7. The FIR is of the year 2014. On the earlier occasion, this Court had granted time to the respondent to find out whether the statement of the victim was recorded and what are the materials justifying the invocation of Section 3, 4 and 5 of the PITA. I am informed by learned APP that the statement of the victim is not recorded. Only material relied upon by learned APP is the statement of the police officials of the raiding party that the applicant was found in a room along with a woman indulging in activities which is an offence under PITA. Sections 3, 4 and 5 of the PITA reads thus:-

“3. Punishment for keeping a brothel or allowing premises to be used as a brothel. - (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who-

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge

that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

[(2A) For the purposes of sub-section (2) it shall be presumed until the contrary is proved, that any person referred to in clause(a) or clause(b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case maybe, has knowledge that the premises or any part thereof are being used as a brothel, if, -

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person].

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

4. Punishment for living on the earnings of prostitution. - (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of 1[any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both 2[and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years].

[(2) Where any person over the age of eighteen years is proved -

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meanings of Sub-section (1).]

5. Procuring, including or taking person for the sake of prostitution. - (1) Any person who -

(a) procures or attempts to procure a 1[person], whether with or without his consent, for the purpose of prostitution; or

(b) includes a [person] to go from any place, with the intent that he, may for the purpose of prostitution become the inmate of or frequent, a brothel; or

(c) takes or attempts to take a [person], or causes a [person] to be taken, from one place to another with a view to his carrying on or being brought up to carry on prostitution; or

(d) causes or induces a 1[person] to carry on prostitution;

[shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years :

Provided that if the person of whom an offence committed under this sub-section,-

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years].

[***]

(3) An offence under this section shall be triable -

(a) in the place from which a [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made."

8. Section 370 of the IPC which has been invoked in the present case against the applicant reads thus:-

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 overthe 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."

9. In my view, Sections 3 and 4 of the PITA as well as Section 370 of the IPC are not at all attracted in the present facts as the applicant is alleged to be a customer and as the statement of the victim is not recorded. So far as Section 5(a) of the PITA is concerned, learned APP vehemently submitted that the applicant procured the woman for prostitution and therefore, the applicant can be proceeded with for the offence punishable under Section 5 (a) of the PITA.

10. I may refer to few decisions of the High Courts relied by learned counsel which dealt with Section 3, 4, and 5 of the PITA. The Telangana High Court in **Mitan Singh vs. The State of Telangana**¹ in paragraphs 5, 6 and 7 has held thus:-

"5. This Court while dealing with the same subject matter, in the order, dated 11.7.2022, that is rendered in Criminal Petition No.5999 of 2022 has extensively dealt with the issue whether

¹ CrI. Petition No.9565/2022 decided on 31/10/2022.

'customer' would fall within the ambit of Sections 3 to 5 of the PITA Act and held that the provisions of the PITA Act does not cover the alleged customer. Same view was taken by this Court again in the decision that is rendered in Criminal Petition Nos.6806 and 6807 of 2022, dated 08.8.2022. This Court at paras 6 and 7 of the said common order held as follows:-

"6. Whether a customer would fall within the ambit of the provisions of [Prevention of Immoral Traffic Act](#) or not was extensively dealt with by this Court in the decision that is rendered in Criminal Petition No.5999 of 2022 dated Dr.CSL, J CrIPNo.9565 of 2022 11.07.2022 (by Hon'ble Dr.Justice Chillakur Sumalatha). In the said decision, the observations of the Court, more particularly, at paras 10 to 13, are as under:-

"10. Section 3 of the PITA Act, 1956 prescribes punishment for keeping a brothel or allowing the premises to be used as brothel. [Section 4](#) of the Act, 1956, prescribes punishment for living on the earnings of prostitution. Likewise, [Section 5](#) of the Act, 1956, prescribes punishment for procuring, inducing or taking person for the sake of prostitution. Therefore, as rightly submitted by learned counsel for the petitioner, those provisions does not attract to the customer who approaches a brothel house or a woman in prostitution. Thus, this Court is of the view that continuation of proceedings against the petitioner-Accused No.4, even as per the version of prosecution who is the customer, under the provisions of [Sections 3 to 5](#) of the Act, 1956 is un-desirable. However, [Section 370-A](#) IPC prohibits exploitation of traffic in person. The said provision reads as under: "370A. Exploitation of a trafficked person.--(1) Whoever, knowingly or having reason to believe Dr.CSL, J CrIPNo.9565 of 2022 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."

11. Thus, by the above provisions, it is clear that whoever knowingly or having reason to believe that a minor or a person has been trafficked, engages such minor or person for sexual exploitation, shall be punished.

12. Similar view has been expressed by this Court in the case of Goneka Sajan Kumar Vs State of A.P1 and in the case of Z.

Lourdiah Naidu and another Vs State of A.P2.

1 (2014) 2 ALD (CrI) 264 2 (2013) 2 LD (CrI) 393 Dr.CSL, J CrIPNo.9565 of 2022

13. In the case on hand, the acts committed by the petitioner-Accused No.4 as per the contents of charge sheet squarely fall within the ambit of [Section 370-A \(ii\) IPC](#)."

7. Thus, by the above decision, it is clearly indicated that [Sections 3 to 5](#) of the Prevention of Immoral Traffic Act does not attract the customers. However, [Section 370-A IPC](#) attracts. Indicating the same view, the Criminal Petitions are disposed of. The Investigating Officer shall take note of the fact that [Sections 3 to 5](#) of Prevention of Immoral Traffic Act does not cover the acts of the customers who are found involved in the acts pertaining to which the [Prevention of Immoral Traffic Act](#) is legislated. However, the customers would fall within the ambit of [Section 370-A IPC](#). Therefore, in case, convincing material is found attracting the said provision, the Investigating Agency can proceed with the filing of final report on completion of investigation in respect of the said provision or in respect of any other provisions, except the provisions covered under [Prevention of Immoral Traffic Act](#)."

6. As rightly submitted by the learned Assistant Public Prosecutor, on investigation, charge sheet would be accordingly laid by quoting the provisions of law which attracts to the case facts. However, the apprehension of the learned counsel for the petitioner is that in case, in a mechanical manner, Police concerned incorporates Sections 3 to 5 of the PITA Act, the trial of the case would be conducted by the Sessions Court and the petitioner would be put to hardship.

7. Having considered the submission thus made, this Court considers it desirable to dispose of this Criminal Petition indicating the legal position to be followed."

11. The High Court of Karnataka in Chandru S. & another vs. The State by Malleshwaram P. S. Bengaluru & another² in paragraphs 3, 4 5 and 6 observed thus:-

"3. In all the above said decisions, this Court has considered that

² CrI. Petition No.5059/2017 decided on 7/12/2017.

the offences under Sections 3,4,5 and 7 of the ITP Act and [Section 370](#) IPC are not attracted, so far as the customers of a brothel house is concerned. In fact, this Court has consistently come to the conclusion after analyzing the above said provisions in the above said cases, that the constitution of the offences are not made-out so far as the customers are concerned.

4. This is also evident from the reading of the above said provisions that,-

Section-3 of the Act is a section which provides punishment for keeping a brothel or allowing premises to be used as brothel.

Section-4 provides for punishment of living on the earnings of the prostitution.

Section-5 provides procuring, inducing or taking person for the sake of prostitution.

Section-7 applies to prostitution and in or in the vicinity of public place.

(Emphasis Supplied)

5. Therefore, none of the above said provisions are attracted so far as the customers are concerned. Though it is felt by this Court on various occasions that the customer virtually encourages prostitution, but in the absence of any specific penal provision, it cannot be said that he is liable for any prosecution for the above said offences.

6. In the above said circumstances, I do not find any strong reason to differ from the above said consistent view taken by this Court. There is no legal impediment to quash the proceeding."

12. No doubt, the decisions relied upon are of persuasive value. However, in my opinion, it may not be necessary to rely upon the aforesaid decisions and express any opinion thereon in the light of the view that I propose to take.

13. In the present case the only incriminating material relied upon by the prosecution against him is the statement

of the police official that the applicant who is a customer, was found in a room with the victim. The statement of the victim was not recorded. In such view of the matter, it can hardly be said that there is any material on record even at this stage qua this applicant to demonstrate that the victim was procured or attempt was made to procure the victim for the prostitution. In this view of the matter, in my opinion, on the basis of such materials even if taken at its face value does not disclose the existence of the ingredients necessary to constitute the offence. I rely upon the decision in **State by Karnataka Lakayukta Police Station, Bengaluru vs. M. R. Hiremath³**, in support of my conclusion.

14. The impugned order is set aside qua the applicant only.

15. The revision application is allowed in terms of prayer clauses (a) and (b).

16. The revision application is disposed of.

(M. S. KARNIK, J.)

³ (2014) 11 SCC 709.