

Cri. Appeal No. 112/2021

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MHCC050045172021



Presented on : 02/09/2021
Registered on : 02/09/2021
Decided on : 07/10/2021
Duration : 1 M. 5 ds

IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

CRIMINAL APPEAL NO. 112 OF 2021

Exh. No. : 3

XYZ

..Appellant (the father of the victim)

Vs

The State of Maharashtra

(through Airport Police Station)

..Respondent (Orig. Prosecution)

Ld. adv. Tiwari, for the appellant.

Ld. adv. Sachin Jadhav, for the respondent.

CORAM : SHRI S. U. BAGHELE,
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.09.

DATE : 7th October, 2021

ORAL JUDGEMENT

This appeal is arising out of the final order passed by the Metropolitan Magistrate, 15th Court, Mazgaon, at Sewree, Mumbai, on

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20/08/2021, in PITA R.A. No. 826 of 2021, in C. R. No. 50 of 2021, of Airport Police Station, thereby directing the detention of the victim for a period of two years, under section 17 (4) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as " PITA Act " for brevity). With a view to ensure the secrecy as regards the names of the victim and her father, the said names have been suppressed in the title of this Judgment and the body of the Judgment.

2 The factual matrix, germane for the decision of this appeal, is that the victim came to be removed by the police, by exercising the powers bestowed upon them by virtue of Section 15 of the PITA Act, as she was allegedly induced to carry on prostitution for the gain of another.

3 After the production of the victim before the learned Magistrate, an inquiry, as contemplated under section 17 (2) of the PITA Act is said to have been conducted and ultimately, a final order u/sec. 17 (4) is said to have been passed, thereby directing the detention of the victim for a period of two years, which order came to be assailed in this appeal, *inter alia*, on the grounds that the learned Magistrate failed to appreciate the factual matrix and the legal provisions in the proper perspective. *Per contra*, the contention of the respondent/state is that there is no error in the passing of the said order.

4 Considering the rival contentions of the parties, the following points arose for my determination, and I record my findings thereon, with the reasons to follow thereunder :

<u>Points</u>	<u>Findings</u>
1. Whether the impugned order warrants any interference, either on facts or the law ?	In the negative.
2. What order ?	As per the final order.

REASONS

As to point Nos. 1 and 2 :

5 Heard Mr. Tiwari, the learned counsel for the appellant, and the learned APP, Sachin Jadhav, for the respondent/State. It is submitted by Mr. Tiwari that the victim works as an actor and the appellant, who is her father, is a police officer. He can maintain his daughter. Everyone from the family of victim is financially sound. The victim is willing to go to her family. She was nabbed due to misunderstanding and detained due to being HIV positive. He placed his reliance upon an authority in the case of **Asiya Anwar Shaikh Vs The State of Maharashtra and Anr. in Criminal Writ Petition No. 2050 of 2019, decided by the Hon'ble High Court of Judicature at Bombay on 11th July, 2019**, wherein the victim therein was directed to be set at liberty, as she had spent more than six months in the corrective institution and the Protection Officer had opined that it was appropriate to give her custody to the petitioner therein. It was further observed that there was no material to suggest that the victim therein was suffering from any disability to pose any danger to the society.

6 Per contra, it is submitted by the learned APP that the victim was caught red-handed. She was sent for vocational training, etc., as she was HIV positive. The order is proper.

7 As only limited aspects are pressed into service before this court during the arguments, the rest of the aspects need not be looked into. The perusal of the impugned order reveals that the learned Magistrate directed the detention of the victim, as she was found to be HIV positive, by observing that there was the possibility of the transmission thereof due to the sexual intercourse. It was further considered that the victim was to be rehabilitated and stopped from indulging into prostitution, by counseling her.

8 Though it is sought to be canvassed from the side of the appellant that the victim was not involved in prostitution, the perusal of the FIR prima-facie reveals otherwise, due to which, she was considered to be a victim. As the victim is indisputedly suffering from HIV, which can be easily transmitted through sexual intercourse, the setting of the victim at large is likely to pose danger to the society, due to which, the factual scenario in the case at hand is different from the factual scenario in the above authority relied upon. The care and protection of the victim can also be ensured, by detaining her, as directed by the learned Magistrate, so as to ensure that the victim leads a normal life in future, after getting necessary brainwash. There is no substance in the submission that the victim is not likely to indulge into such immoral activities, being financially sound, looking to the factual matrix, as prima-facie apparent from the FIR, whereby the victim is said to have agreed to indulge into prostitution at the particular moment, by accepting Rs. 1,00,000/-.

9 For the foregoing observations, I have no hesitation to hold that the impugned order, passed by the learned Magistrate, is correct and legal, and does not warrant any interference. Thus, I answered the point no.1 in the negative, and I proceed to pass the following order :

ORDER

- 1) Criminal Appeal No. 112 of 2021 is hereby dismissed and disposed of accordingly.
- 2) An authenticated copy of this Judgment be sent to the Magistrate, forthwith.

Sd/-

(S. U. BAGHELE)

Dt. 07/10/2021

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on : 07/10/2021
Transcribed on : 07/10/2021
Signed on : 07/10/2021

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

07/10/2021 at 5.36 p.m.

UPLOAD DATE AND TIME

Mrs. S.B. Vichare

NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ Shri S. U. Baghele, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 09)
Date of Pronouncement of JUDGEMENT/ORDER	07/10/2021

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JUDGEMENT/ORDER signed by P.O. on	07/10/2021
JUDGEMENT/ORDER uploaded on	07/10/2021