

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 227 OF 2003

Smt. Rita Dilip Ghosh
aged 42 yrs. residing at Corner Room, 3rd Floor,
Rele Building, Shamrao Vithal Marg, Mumbai. ...Applicant

Versus

State of Maharashtra
(D.B. Marg Police Station) ...Respondent

Mr. Himanshu Indise a/w Mr. Sujay Shingade & Mr. Abhishek Kunchikor
for the Applicant.

Ms. Manisha R. Tidke, APP for the Respondent/State.

Mr. Deepak Pol, PSI, Investigating Officer, Dr. D.B. Marg Police Station,
Mumbai.

CORAM : M.M. SATHAYE, J.

DATE : 03rd JULY, 2026

JUDGMENT :

1. This is a case involving human trafficking of two minor girls.
2. The Applicant is original accused, who has filed this criminal revision, challenging order dated 07.04.2003 passed by Additional Sessions Judge, Greater Mumbai in Criminal Appeal No. 16 of 2003. By the said impugned order, the appeal filed by Applicant is dismissed, thereby confirming the judgment and order dated 16.01.2003 passed by Metropolitan Magistrate, 18th Court, Girgaon, Mumbai in CC. No. 44/P/97. The learned Magistrate has convicted the Applicant for offence punishable under Section 6 of Immoral Traffic (Prevention) Act, 1956 ('PITA' for short) and sentenced her to suffer rigorous imprisonment (RI) for 2 years and to pay fine of Rs. 3,000/- and in default, to undergo simple imprisonment (SI) for 3 months. Set off under section 428 of the Code of Criminal Procedure, 1973 ('Cr.P.C.')

for short) has been given to the Applicant. The Magistrate has acquitted the Applicant of the offence punishable under Section 41 of Juvenile Justice Act, 1986.

3. The case of the prosecution in short is that on 26.08.1996, Officers of Dr. D.B. Marg police station received information about brothel being run at Rele /Rai building, S.V. Marg, Mumbai ('the said Building' for short). Accordingly, one of the officers Shri. Jadhav called two panchas who were informed about the brothel and the proposed raid. That the police authority with the panchas raided the said building. That on 3rd floor, they found two minor girls in one room with the Applicant. That minor girls were rescued, Applicant was arrested and on investigation, the Applicant was charge-sheeted. The allegation is that minor girls were found with the Applicant in the said building which was used for the purpose of prostitution and that they were minor girls treated with cruelty.

4. The Applicant pleaded not guilty and her defence is of total denial.

5. The prosecution examined PW-1 - Smt.Lata Manoj Gohil who is a panch witness and also a DHMS doctor, PW-2 -Kiran Dashrath Kabadi is a police sub-inspector (PSI) attached to the concerned police station on the date of the raid, PW-3 is Mr. Khemsingh Laxman Jadhav who is Senior Police Inspector (Sr. PI) of the concerned police station on the date of the raid and PW-4 is a doctor- Ramramrao Tukaram Kendre, who was attached to Nagpada Police Hospital at the relevant time as R.M.O.

6. On appreciation of evidence, the learned Magistrate found the

Applicant to be guilty of offence punishable under section 6 of PITA only. The Applicant filed the said appeal and by the impugned order, the conviction as well as sentence passed by the Magistrate has been confirmed.

SUBMISSIONS

7. Learned counsel for the Applicant submitted as under:

7.1 That the allegations leveled against the Applicant are not proved beyond reasonable doubt. That there is material contradiction in evidence because PW-1 has stated that she was called as panch witness on 27.08.1996, however, the case of the prosecution is that raid was conducted on 26.08.1996 as per statements of PW-2 and PW-3.

7.2. That ingredient of brothel being run by Applicant is not proved beyond reasonable doubt.

7.3. That PW-2 has stated that there is delay of 24 hours in registration of the First Information Report ('FIR' for short) on account of victims not being medically examined, but PW-3 has stated that there is no delay in filing of F.I.R. and time is incorrectly mentioned as 12:30 Hrs instead of 00.30 Hrs. That, therefore, there is material contradiction about reason for delay in filing F.I.R. That the prosecution has failed to explain delay in filing the F.I.R.

7.4. That PW-3 has given contradictory statements about victims being found in custody of the Applicant.

7.5. That PW-4 Medical Officer has not conducted ossification test to come to conclusive finding about age of victims and opinion about age

is given on examination of private parts and higher secondary characters of the victims along with X-rays.

7.6. That the statements of victims are not recorded to corroborate the allegations and the prosecution has deliberately chosen not to record statements of victims as the same would have otherwise revealed the truth and therefore, adverse inference be drawn.

7.7. That the prosecution has not placed any other evidence to indicate that any cruelty was inflicted upon the victims and the statement of PW-4 - medical officer about old burn marks on the lower part of leg of one of the victim is not supported and corroborated.

7.8. That only a Special Officer is empowered to take action in connection with provisions under PITA as per Section 15 thereof and the case of the prosecution that ACP- Gawali was present at the time of conducting raid has not been proved. That prosecution has failed to record the statements of ACP- Gawali. That panch does not mention of the said ACP- Gawali being present.

7.9. That the entire case of the prosecution is based on circumstantial evidence which does not pass the test laid down under **Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116**. He relied on the following judgments in support of Applicant's case :

- (i) Noor Aga Vs. State of Punjab and Anr. (2008) 16 SCC 417.
- (ii) Ganesh Bhavan Patel and Anr. Vs. State of Maharashtra (1978) 4 SCC 371.
- (iii) Mussauddin Ahmed Vs. State of Assam (2009) 14 SCC 541.

- (iv) P. Sasikumar Vs. State represented by the Inspector of Police (2024) 8 SCC 600.
- (v) Chandrappa and Ors. Vs. State of Karnataka (2007) 4 SCC 415.
- (vi) State of Madhya Pradesh Vs. Anoop Singh (2015) 7 SCC 773.
- (vii) K. Chinnaswamy Reddy Vs. State of Andhra Pradesh and Anr. AIR 1962 SC 1788.
- (viii) Sharad Birdichand Sarda vs. State of Maharashtra (1984) 4 SCC 116.

8. On the other hand learned APP supported the impugned order for both, conviction as well as sentence. She submitted as under.

8.1. That the Applicant is the owner of the said building which was raided.

8.2. That the Courts below have rightly considered that since the victim girls were sent to their native places by the Juvenile Board, their statements could not be recorded and they could not be examined in Court.

8.3. That the alleged contradictions are not material because in any case, FIR was filed within 24 hours. That PW-2 has only admitted that there was delay of about 24 hours and PW-3 has stated that time mentioned in the FIR should have been 00:30 Hrs. That in this case, the raid has taken place from 26.08.1996 throughout the night till early hours of 27.08.1996, as can be seen from panchnama and evidence of PW-1 and the alleged contradictions are not material, considering that the victims were to be medically examined and handed-over to the Juvenile Justice Board and it required formalities to be completed.

8.4. That the testimony of the witnesses inspire confidence and medical evidence also supports that the victims were minors.

8.5. She strongly objected to the argument about absence of ossification test contending that X-rays are considered by the medical officer and therefore it cannot be said that ossification test has not taken place.

8.6. She submitted that argument about dates mentioned by PW-1 and PW-2 & PW-3 was never advanced earlier. That the argument about case of circumstantial evidence is factually incorrect because three prosecution-witnesses have seen the minor girls in the said building with the Applicant.

8.7. She submitted that the offence is very serious and concurrent finding of conviction and sentence requires no interference in the limited revisional jurisdiction of this Court.

REASONS AND CONCLUSION

9. I have carefully considered the rival submissions and perused the record.

10. At the outset, it is pertinent to note that there is no merit in the argument of learned counsel for the Applicant that statements of the victims were not recorded. I have perused the record and proceedings, which contain statements of victims at D-51 and D-52. However since those statements are recorded by the police and the said victims have not entered the witness box before the Court, those statements are not being considered in order to ensure fair and legal

consideration.

11. It is necessary to note that the offence under PITA is a very serious offence which is against humanity and the society at large. Human trafficking involves brutal methods adopted by the traffickers including kidnapping, abduction, torture, threat to life, confinement and many other inhuman treatment of the victims involved. The offence of trafficking when perpetrated against minors makes it even worse and heinous. Often, the victims who are rescued are suffering from trauma and are not in a position to give clear statements. For obvious reasons as the victims fear for their own lives and lives of their near-ones, are not willing to give statements to police, much less stand in the Court for that. Therefore, much depends on the prosecution witnesses such as police officers and panchas. Therefore, 'minor contradictions' in the evidence of prosecution witnesses can not be held as fatal to the prosecution's case.

12. PW-1 Smt. Lata Gohil is a panch witness, who has stated that on 27.08.1996 she was called as panch witness and when she reached the 3rd floor of the said building she was shown there, two minors girls who were residing there and the Applicant/accused (present before the Court) was also shown to her in that room who was present with two minor girls. In cross examination, she has stated that one old woman, who was another panch witness was also present.

13. This witness is incidentally a DHMS doctor who has stated in the cross-examination that the girls were minor on appearance. It is material to note that advocate for the Applicant-accused has himself asked this question inviting this statement from PW-1.

14. PW-2 – PSI Kiran Kabadi has stated that on 26.08.1996 he received information about brothel being run in the said building. He has further stated that two panchas were called for the purpose of raid. He has further stated that the police team with ACP Gawali along with two panchas proceeded to 3rd floor of the said building and they found two minor girls in one room. He has stated that the said girls informed that Applicant is the owner of the building. He has stated that thereafter the girls were sent to children home and the Applicant was arrested. The suggestion that ACP Gawali was not present with them, has been specifically denied by this witness.

15. PW-3 Sr. PI Jadhav has stated that on 26.08.1996 he was on duty when he received information that two minor girls are kept in the said building on the 3rd floor. He has stated that the police team visited the spot. He has stated that they rescued two minor girls and he came to know that prostitution was being run in the said place by the Applicant. He has identified Applicant who was present in the Court. He has also stated that the girls were rescued and were sent to the children home. This witness clearly stated that both victim girls are not traceable as they were sent to their respective native place by the Juvenile Board. It is material to note that this evidence is recorded in September, 2002.

16. Perusal of the panchnama (Exh. P1) shows that PW-1 Smt. Lata Manoj Gohil and Smt. Prabhavati Namdeo Randive were panchas, who have signed it. Panchnama is recorded between 1.00 hrs to 2.00 hrs on 27.08.1996. It is recorded in presence of panchas. It is recorded that police searched 3rd floor of the said building where two

minor girls were found who were taken in custody. It is also recorded that girls were residing with the Applicant. Names of the girls are written in panchnama.

17. Combined reading of evidence of PW-1, PW-2 and PW-3 alongwith panchnama clearly shows that tip/information was received on earlier day i.e. 26.08.1996 and by the time panchas came and the 3rd floor of the said building was searched, it was post midnight and therefore date was 27.08.1996. That is why the panchnama is recorded between 1.00 hrs to 2.00 hrs. That is why PW-1 panch witness has stated date as 27.08.1996 and PW-2 and PW-3 have started their evidence with 26.08.1996. This is further corroborated by FIR being registered on 27.08.1996 at 12.30 hrs.

18. For the aforesaid reasons, assuming that the FIR was filed at 12:30 Hrs. on 27.08.1996, so called delay of 24 hours is well explained. Considering the fact that it was necessary to send the minors for medical examination and to the Children's home, because they were minors. It is obvious that this procedure requires formalities to be completed and therefore, the delay (if at all) is sufficiently explained.

19. Under section 6(2) of PITA, there is presumption against the accused that if he or she is found with a child in a brothel, it should be presumed, unless contrary is proved, that he or she has committed an offence under section 6(1). This presumption is rebuttable however for that, evidence is necessary.

20. In the present case PW-4 -medical officer is an MBBS doctor.

He has entered witness box and has stated that in September, 1996 he was attached to Nagpada Police Hospital as R.M.O and on 10.09.1996, the concerned police station referred 9 girls for age verification out of which 8 were examined by him. He has stated that on history being asked, one of the victims in the present case stated that 'she was sold by the Applicant' in the concerned building. He has stated that on the basis of physical examination of private parts and higher secondary characters and after obtaining X-rays, the age of the victim was about 13 to 14 years. The concerned certificate has been identified by the witness. He has further stated that he has examined the other victim also on the same day, who also said of being asked history, that 'she was sold to the Applicant' in the said building. He has stated that this victim complained about torture by burns. He has further stated that old burn marks were found on the left leg of this victim. He has stated that on clinical examination of private parts and from the X-rays, her age was certified to be 13 to 14 years. He has also identified the concerned certificate issued.

21. Now let us consider the argument that no ossification test was conducted. 'Ossification', as per **Dorland's Illustrated Medical Dictionary** means - *'The formation of bone or of a bony substance; the conversion of fibrous tissue or cartilage into bone or a bony substance'*.

22. In **Vinod Katara Vs. State of Uttar Pradesh (2023) 15 SCC 210**, Hon'ble Supreme Court has recently observed as follows :

"61. The bone ossification test (hereinafter "the ossification test") is a test that determines age based on the "degree of fusion of

bone" by taking the X-ray of a few bones. In simple words, the ossification test or osteogenesis is the process of the bone formation based on the fusion of joints between the birth and age of twenty-five years in an individual. Bone age is an indicator of the skeletal and biological maturity of an individual which assists in the determination of age. The most common method used for the calculation of the bone age is radiography of the hand and wrist until the age of 18 years beyond which the medial age of clavicle is used for bone age calculation till the age of 22 years as the hand and wrist bone radiographs cannot be computed beyond 18 years of age as the elongation of the bone is complete after adolescence. However, it must be noted that the ossification test varies slightly based on individual characteristics, therefore the ossification test though is relevant however it cannot be called solely conclusive."

(emphasis supplied)

23. Therefore it is necessary to note that in ossification test, there is nothing else but an X-ray of the concerned person and the medical opinion of the doctor. In the present case, PW-4 doctor has given his opinion about age on the basis of an X-ray in case of both victims apart from clinical examination of their private parts and higher secondary characteristics. Admittedly, X-rays are considered by the doctor. Even then, learned counsel for the Applicant has advanced an argument that no ossification test was conducted. This argument is contrary to the facts. This has resulted in precious judicial time being wasted.

24. Coming back to the case, assuming margin of plus-minus 2 years, and considering age on the higher side as per PW-4 (14 years), at the most the victims were 16 years old at the relevant time, still

minors.

25. Combined reading of PW-1, PW-2 and PW-3, out of whom PW-1 is an independent panch witness, I find sufficient corroboration in the case of the prosecution that during raid, the victims were found in the said building with Applicant therefore, presumption under Section 6(2) of PITA runs with full force against the Applicant. The presumption under Section 6(2) has not been rebutted. The Applicant has not led any evidence. Applicant has not entered witness box. Applicant's case is of total denial. Therefore presumption is not rebutted. Therefore I have no hesitation to hold that the guilt is proved beyond reasonable doubt.

26. In the light of the aforesaid evidence, when the impugned orders are perused, both the Courts have considered the evidence on record and concurrently found that necessary ingredients are made out since minor girls are found in a place of prostitution along with Applicant. The presumption runs against the Applicant. It is therefore not necessary to prove beyond reasonable doubt the aspect of detention under Section 6 (1) of the said Act as contended by learned counsel for the Applicant.

27. The argument of learned counsel for the Applicant is that only Special Officer is empowered as per Section 15 of the PITA to take action and participation of such Special Officer is not proved and prosecution has failed to record statement of Assistant Commissioner of Police ('ACP' for short) - Gawali. In this respect, it is material to note that the ACP-Mr. Gawali as a Special Police Officer was appointed by the State Government under PITA. PW-2 has stated in his

evidence that at the time of raid ACP-Mr. Gawali was present, who participated in the raid. This evidence has been believed and found to be sufficient by the Court's below. In my view, in the revisional jurisdiction it is not possible to re-appreciate this evidence to come to a contrary conclusion. In that view of the matter, the said argument has not merit.

28. Now let us consider various judgments relied upon by the learned counsel for the Applicant.

29. In **Noor Agha (Supra)**, the Hon'ble Supreme Court was dealing with the constitutionality of Sec. 35 and 54 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS' for short). This judgment is relied upon in support of the submission that foundational facts must be proved before statutory presumption is triggered. In Paragraph No. 58 of the said judgment, the Hon'ble Supreme court has observed that Presumptions contained in the NDPS Act would operate in the Trial only in the event the circumstances contained therein are fully satisfied. In the present case at hand, the foundational facts are clearly and completely satisfied by the prosecution, where the victims were clearly found with the Applicant in a brothel. Thus this judgment would not advance the case of the Applicant.

30. In **Ganesh Bhavan Patel (Supra)**, the three judges bench of the Hon'ble Supreme Court was dealing with a matter which pertained to 'appeal against acquittal' and the powers of the High court to reverse the decision. The Hon'ble Supreme Court was dealing with a case in which the statement of the informant (treated as FIR) was purportedly recorded at midnight but his sign was obtained at 3:00 am. In the

present case at hand, the delay in filing of FIR is well explained and it is not fatal to the case of the prosecution. Thus, this judgment will also not advance the case of the Applicant.

31. In **Mussaudin Ahmed (Supra)**, the Hon'ble Supreme Court has held that if the parties do not advance their best possible evidence which could throw light on the issue in controversy, the Court may draw adverse inference under Sec. 114(g) of the Indian Evidence Act, 1872. The argument of the learned counsel Applicant, in the present case is that the victims' statement have not been recorded and they have not been examined, therefore adverse inference should be drawn. Firstly, it is a matter of judicial discretion in the facts and circumstances of each case. As already held above, in cases where minor girls are involved in immoral traffic, such as the present one, the victims hesitate to be examined and do not in most cases remain in the forefront throughout the litigation. In view of the other corroborating evidence, this is not a fit case to draw adverse inference. Therefore, this judgment also does not help the Applicant.

32. In **P. Sasikumar (Supra)**, the Hon'ble Hon'ble Supreme Court was dealing with a matter involving Sec. 302 of IPC in which the accused had killed a 14 year old and was directly identified by the prosecution witness in the Court without a formal Test Identification Parade ('TIP' for short) being conducted. It was held that where accused is a 'stranger to the witness' and there is no TIP, Courts have to be cautious. In the present case at hand, the panchas and the police officers have seen the Applicant and have found the minor girls in the custody of the Applicant during raid. Therefore it can not be said that Applicant is stranger to the witnesses. The witnesses have identified

the Applicant in the Court. Therefore on facts, this judgment will not help the Applicant.

33. In **Chandrappa and Others (Supra)**, the Hon'ble Supreme Court has laid down the principles and the Powers of the 'Appellate Court' to re-appreciate, review or reconsider evidence and interfere with 'acquittal' under Sec. 378 in cases of appeal against acquittal. In Paragraph No.43, Hon'ble Supreme Court considered that prosecution had failed to examine certain persons who could have unfolded the genesis of the case. This judgment is relied upon for arguing if there are material contradictions, benefit of doubt is to be extended to the accused. In the present case at hand, it is already held on facts that there are no material contradictions. Thus this case would also not advance the case of the Applicant.

34. In **State of Madhya Pradesh Vs. Anoop Singh (Supra)**, the Hon'ble Supreme Court was dealing with a matter under Sec. 376 of the IPC considering the evidentiary value of Ossification test and held that it is not the sole criterion for determination of date of birth. In the present case at hand, the advocate for the Applicant himself invited a statement from PW-1 (panch) that she is a DHMS doctor, who testified that two girls found in the brothel were minor on appearance. This in fact corroborates with medical evidence in the present case. Thus, this case is clearly distinguishable on facts and will not advance the case of the Applicant.

35. In **K. Chinnaswamy Reddy (Supra)**, the three judges bench of the Hon'ble Supreme Court, has laid down the scope and powers of the revisional court. In Paragraph No.7, the Hon'ble Supreme Court

has held that the High Court's revisional jurisdiction should be exercised judiciously, only in exceptional cases when there is some glaring defect in procedure or manifest error of law resulting in flagrant miscarriage of justice. No such defect or error exists in the present case. Therefore, this judgment supports the Respondent / prosecution.

36. Lastly, so far as the judgment of **Sharad Birdichand Sarda (supra)** is concerned, combined reading of evidence of PW-1, PW-2 and PW-3 alongwith panchnama clearly shows strong circumstance against the Applicant / accused and the chain of evidence is found complete.

37. In the aforesaid facts and circumstances and for the reasons indicated above, this is not a fit case to interfere in concurrent findings. There is no merit in the revision. **The Revision Application is dismissed.** Rule is discharged. Bail bonds and sureties, if any, stand cancelled.

38. The concerned Trial Court is directed to take appropriate steps to secure presence of Applicant in accordance with law.

(M.M. SATHAYE, J.)