
2002 ALL MR (Cri) 2400
IN THE HIGH COURT OF JUDICATURES AT BOMBAY
A. P. SHAH & SMT. RANJANA DESAI, JJ
PRERANA
V/S
STATE OF MAHARASHTRA & ORS.

Criminal writ petition No. 788 of 2002, 7th Oct. 2002

Mrs. MAHARUKH ADENWALLA with Mr. Y. M. CHAUDHARI for Petitioner.

Mr. P. JANARDHAN, Addl. Advocate-General with Mr. I. S. THAKUR, A. P. P. for Respondent 1.

Mr. V. M. THORAT for Respondent 3.

(A) Juvenile Justice (Care & Protection of Children) Act (2000), Ss.2(a), 2(d) - Immoral Traffic (Prevention) Act (1956), S.17 (2) - Juvenile in conflict with law or a child in need of care and protection or a girl found soliciting in a public place produced before court - Court should first ascertain their age and if found to be below 18 must transfer the case to Juvenile Justice Board or to Child Welfare Committee as the case may be - Guidelines for procedure to be adopted laid down.

The following direction shall be followed in future events: -

- (A) No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Section 2(1) and 2(d) of the Juvenile Justice (Care & Protection of Children) Act 2000. At the first possible instance, the Magistrate must take steps to ascertain the age of a person who seems to be under 18 yrs of age. When such a person is found to be under 8 yrs of age, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.
- (B) A magistrate before whom persons rescued under the Immoral traffic (Prevention) Act 1956 or found soliciting in a public place are produced, should, under section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 yrs of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a Juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.
- (C) Any Juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the probation officer.
- (D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

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- (E) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act 2000 should be followed for the rehabilitation of the rescued child
- (F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act 1956 or found soliciting in a public place. Only the parents/guardian of such Juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose
- (G) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act 1956.
(Para 37)
- (B) Advocates Act (1961), Ss.30, 35 - Advocate appearing for a pimp or brothel keeper - Should not appear in the same case for the victims rescued from the brothels.
(Para 37)
- (C) Immoral Traffic (Prevention) Act 1956, S.17(2) - Appearance before Child Welfare Committee - Only parents/guardian of juvenile should be permitted to make representations through themselves or through advocate - Advocate can not appear on behalf of juvenile directly.**

(Para 37 Direction (F))

SMT. RANJANA DESAI, J.:- Rule. respondents waive service. By consent of the parties, taken up for hearing forthwith.

2. The petitioner is a registered organisation established in 1986. It does work in the red-light areas of Mumbai and Navi Mumbai with the object of preventing the trafficking of women and children and rehabilitating the victims of forced prostitution. This petition is filed in public interest to protect children and minor girls rescued from the flesh trade against the pimps and brothel keepers keen or re-acquiring possession of the girls.

3. The 1st respondent, State of Maharashtra has established institutions for the care, protection and rehabilitation of women and children rescued from the flesh trade. The Government Special Rehabilitation Centre for Girls at Deonar is one such institution for the care and protection of child victims of forced prostitution. The 2nd respondent is the Probation Officer appointed under the Probation of Offenders Act, 1958 for The Government Special Rehabilitation Centre for Girls. The 3rd respondent, V.P.Jaiswal is an advocate, who, it is alleged, has appeared for the brothel keeper as well as the minor girls rescued from the brothel.

4. The facts, which give rise to the present petition, may be shortly stated. On 16-5-2002, the Social Service Branch raided the brothel at Santacruz. Four persons, who are alleged to be brothel keepers/pimps, were arrested. Twenty-four females were rescued. The four arrested accused were charged under Sections 3, 4 and 7(2)(a) of the Immoral Traffic (Prevention) Act, 1956 ("PITA" for short) under C.R. No.00/02 (later converted to SP/LAC No. 20/2002 of 16-5-2002) by Social Service Branch. The twenty-four rescued females were not charged, but were taken into custody under Sections 15 and 17 of PITA for the purposes of ascertaining their age and family background.

5. The accused as well as the rescued females were produced before the learned Metropolitan Magistrate at Esplanade on 17-5-2002. The 3rd respondent appeared on behalf of the four accused. The accused were remanded to police custody and the rescued female were sent to the Government Special Rehabilitation Centre for Girls at Deonar so that they may be medically examined and inquiries be made about their parents and guardians. The learned Magistrate, in his order dated 17-5-2002, noted that the Investigating Officer as well as the Addl. Police Prosecutor had submitted that the detention of the rescued girls is necessary in the corrective home for further examination by medical officer and for making further inquiries about their parents and the guardians. He also recorded that the 3rd respondent strongly opposed the application for sending the rescued girls to the corrective home at Deonar. The order indicates that the 3rd respondent argued that the concerned officer had not followed Section 15 & 16 of the PITA and therefore the girls should be released immediately. So far as accused 1 to 4 are concerned, it appears that the 3rd respondent argued that their further interrogation is not necessary as the owner of the brothel was known to the officer and he can be called for interrogation at any time.

6. The learned Magistrate, after considering the arguments, observed that custody of accused 1 to 4 was necessary to know from where they had procured the girls. Having regards to the provisions of Section 15 of the PITA, the learned Magistrate observed that the girls can be sent to the registered Medical Practitioner for the purpose of “ascertainment of their age, for detection of injuries and result of sexual abuse and presence of any sexually transmitted diseases”. In view of this, the learned Magistrate remanded accused 1 to 4 to Police custody till 24-5-2002 and 24 girls along with the report were sent to Shashkiya Mahila Sudharak Griha, Deonar for medical examination, to be kept there till 27-5-2002. A direction was given to the Probation Officer of the said home to make inquiry with the help of the petitioner about the parents and Guardians of the rescued girls and also to make enquiry with the girls and to file his report on or before 22-5-2002.

7. On 20-5-2002 the rescued females were sent for Ossification test in which, 14 of them were found to be adults and remaining 10 were found to be juveniles (under 18 years of age). Of the 10 minor girls six were from Meghalaya, three from Andhra Pradesh and 1 from Assam.

8. The 4 accused were released on bail on 24-5-2002.

9. On 27-5-2002, the twenty-four rescued girls were produced before the learned Metropolitan Magistrate at Esplanade. According to the petitioner, the 3rd respondent were appeared on behalf of the rescued females and pleaded that they should be released. The 2nd respondent stated that further time was required to complete the home studies then in progress as all the girls were from distant places. By order dated 27-5-2002, the learned Magistrate released the adult females and directed that the juvenile females be produced before the Juvenile Court on 28-5-2002.

10. On 28-5-2002, the juvenile females were produced before the Child Welfare Committee as the Juvenile Justice Board sits only on Mondays and Fridays. According to the petitioner, 3rd respondent appeared on behalf of the minor females before the Child Welfare Committee and prayed that the minor rescued females be sent for another age verification test. The Child Welfare Committee conceded to the request and passed orders, but directed that the rescued girls be produced before the Juvenile Justice Board on the next date in accordance with the order dated 27-5-2002.

11. Admittedly, the minor rescued females were produced before the Juvenile Justice Board at Bombay Central Court on 29-5-2002, when the Board adjourned the matter to 13-6-

2002. During the interregnum, the minor females remained in the care and protection of the Special Rehabilitation Centre for Girls at Deonar. The police surgeon refused to conduct the age verification test of these girls as he had already conducted one, a few days earlier.

12. The minor female was produced before the Juvenile Justice Board on 13-6-2002 at Bombay Central Court. According to the petitioner, 3rd respondent filed a vakalatnama dated 13-6-2002 on behalf of the minor girls. He filed a discharge application and prayed that the minor girls be discharged on the ground that they had not committed any offence and had been in custody for over a month. This was opposed by the 2nd respondent and the police. The 2nd respondent prayed for time as she has corresponded with the organisations in the States from where the rescued girls had come and was awaiting their response. On that day no parents or guardians of these minor girls were presented in the court. By order dated 13-6-2002, The Board discharged the minor girls. While releasing the minor girls, the Board noted that the 3rd respondent had made an application for discharge of the girls on the ground that they had not committed any offence and they were in custody for more than one month. The order notices that the 2nd respondent and the police had opposed the said prayer. The learned Judge, presiding over the Board, then observed that he had personally asked every detained girl and all the girls and had shown eagerness to be released. He further observed that under such circumstances it seemed to him that further detention of the girls was illegal and unwarranted because they had not committed any offence and they were victims of circumstances. He therefore ordered their release forthwith with condition that they shall not enter into the local jurisdiction of Social Service Branch. Thus the minor girls were released from the Court itself. The 2nd respondent could not, therefore, take the minor girls to the Government Rehabilitation Centre for the Girls at Deonar. It is in these circumstances, being shocked at the manner in which the rescued girls, through they were minors, were released contrary to the provisions of law, that the petitioner has rushed to this Court.

37. We feel that the following directions may prevent recurrence of such events in future;

(A) No magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need care and protection, as defined by Section 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act 2000. At the first possible intense, the Magistrates must takes steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Welfare Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need care and protection.

(B) A Magistrate before whom persons rescued under the Immoral Traffic (Prevention) Act 1956 or found soliciting in public place are produced, should, under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need care and protection.

(C) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

(D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

(E) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act 2000 should be followed for the rehabilitation of the rescued child.

(F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

(G) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act 1956.

38. We are anxious about the safety of the minor girls who are released. The statement made by the learned A.G.P. that the investigation will go on and vigorous efforts will be made to trace the minor girls has reduced our anxiety to some extent.

39. We have already indicated that respondent 3's conduct in this case needs to be examined by the Bar Council. We therefore direct The Bar Council of Maharashtra to conduct an inquiry into respondent 3, Advocate Jaiswal's conduct in this case, as per law. We make it clear that our observations about his conduct prima facie observations and the Bar Council of Maharashtra should examine his case, after giving him a notice and after giving him an opportunity of hearing in accordance with law, without being influenced by our observation

40. The petition is disposed of with above directions.

Order accordingly