



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 10<sup>TH</sup> DAY OF JUNE, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**R**

**CRIMINAL PETITION NO. 807 OF 2024**

**BETWEEN:**

MRS. SWATHI  
D/O. VENKAPPA. M,  
AGED ABOUT 29 YEARS,  
R/AT UTTHAMESHWARA BHAVAN,  
KOTI VILLAGE, VIDYANAGARA,  
KOPPA TALUK,  
CHICKMANGALORE-577 126.

...PETITIONER

(BY SRI. KUMARA, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
KUNDAPURA POLICE STATION,  
KUNDAPURA CITY,  
UDUPI DISTRICT-576 201.  
REP. BY SPP, HIGH COURT OF KARNATAKA  
BENGALURU - 560 001

2. SMT. REVATHI  
POLICE SUB INSPECTOR,  
KUNDAPURA POLICE STATION,  
KUNDAPURA CITY,  
UDUPI DISTRICT-576 201.

...RESPONDENTS

(BY SRI. B.N. JAGADEESH, ADDL. SPP FOR R1)

THIS CRL.P. IS FILED U/S 482 CR.PC PRAYING TO QUASH THE PROCEEDINGS AGAINST THE PETITIONER / ACCUSED NO.8 IN C.C.NO.1397/2013 ORDERS OF COGNIZANCE TAKEN FOR THE OFFENCES P/U/S 5 OF THE IMMORAL TRAFFIC PREVENTION ACT, 1956 AGAINST THE PETITIONER AND OTHERS ON 13.06.2013, ON THE FILES OF ADDL. CIVIL JUDGE AND JMFC AT KUNDAPURA.





THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner/accused No.8 is before this Court calling in question proceedings in C.C.No.1397/2013 pending before the Additional Civil Judge and JMFC, Kundapura arising out of crime in Crime No.16/2013 registered for offence punishable under Section 5 of the Immoral Traffic Prevention Act, 1956 ('the Act' for short)

2. Heard Sri Kumara, learned counsel appearing for the petitioner and Sri B.N. Jagadeesh, learned Additional State Public Prosecutor for respondent No.1.

3. The facts, in brief, germane are as follows:-

The fulcrum of the complaint is that on 13.01.2013 the Police Sub-Inspector attached to the crime wing of Kundapura Police Station was in the course of investigation in Crime No.13/2013 received an information that some girls are being illegally transported from Udupi to Goa in a tempo traveler



bearing registration No.KA 21 A 2088 for the purpose of putting them in the business of prostitution. The vehicle was intercepted in National High Way 66. It is after such interception, the facts emerge that accused No.1 along with accused No.9 were taking the petitioner/accused No.8 and others for engaging them in the business of prostitution by paying them Rs.10,000/- each. On the basis of the said incident, a crime comes to be registered and the Police after investigation file a charge sheet against all the accused including the petitioner, who is arrayed as accused No.8. The concerned Court takes cognizance of the offence punishable under Section 5 of the Act against the petitioner along with others and registers C.C.No.1397 of 2013.

4. The learned counsel appearing for the petitioner would vehemently contend that the petitioner is the victim of prostitution at the hands of other accused and, therefore, the petitioner should not be permitted to be prosecuted. The learned counsel has projected several legal lacunae to buttress his submission that the entire proceedings are illegal.



5. The learned Additional State Public Prosecutor would refute the submissions to contend that the case is now 10 years old and the petitioner should not now be permitted to knock at the doors of this Court even if she is a victim. She should come out clean in a trial. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The petitioner was being transported for the purpose of engaging her in the business of prostitution is a matter of record. The allegation against the petitioner is one punishable under Section 5 of the Act. Section 5 of the Act reads as follows:

***5. Procuring, inducing or taking person for the sake of prostitution.—(1) any person who—***



- (a) *procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or*
- (b) *induces 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 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 in respect 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.”

*(Emphasis supplied)*

Nowhere Section 5 of the Act would indicate that a woman who is a victim of prostitution should be punished for offences punishable under Section 5 of the Act. It clearly indicates that any person who procures or attempts to procure a woman or a



girl for the purpose of prostitution would become liable for such prosecution.

8. The High Court of Bombay in the case of **KAJAL MUKESH SINGH v. THE STATE OF MAHARASHTRA**<sup>1</sup> was interpreting the provisions of the Act and while so doing holds as follows:

***27. It is interesting to note the relevant provisions of the said Act, which go to show that the purpose and the object of the Act is not to abolish the prostitution or the prostitute. There is no provision under the law which makes prostitution per se a criminal offence or punishes a person because he indulges in prostitution. What is punishable under the Act is sexual exploitation or abuse of person for commercial purpose and to earn the bread thereby, except where a person is carrying on prostitution in a public place as provided in Section 7 or when a person is found soliciting or seducing another person in view of Section 8 of the said Act. The record does not reveal nor there is a charge against the victims - petitioners that they were indulged in prostitution as defined in Section 2(f) of the said Act. There is nothing on record to show that the petitioners were seducing any person for the purpose of prostitution nor there is any material to show that they were running a brothel. It seems that the learned Magistrate has been swayed away while passing the impugned***

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<sup>1</sup> 2020 SCC Online Bom.954



***order by the fact that the petitioners belong to a particular caste.*** It is equally important to note that the petitioners victims are major and, therefore, have a right to reside at the place of their choice, to move freely throughout the territory of India and to choose their own vocation as enshrined in Part III of fundamental rights of the Constitution of India. The learned Magistrate, before passing the impugned order ought to have considered the willingness and consent of the victims before ordering their detention in the protective home. The orders impugned dated 19.10.2019 by the Metropolitan Magistrate, Mazgaon and the order dated 22.11.2019 passed by the Additional Sessions Judge, Dindoshi therefore, need to be quashed as the same are bad in law.”

*(Emphasis supplied)*

The High Court of Bombay holds that it would become an abuse of the process of law, on the face of it, if the victim is permitted to be prosecuted for the offence under the Act, when the Act nowhere punishes the victim of prostitution. As said, the provisions, the purpose or the object of the Act is not to abolish prostitution or the prostitute. There is no provision under the law, which penalizes a victim who indulges in prostitution. What is punishable is sexual exploitation for commercial purposes and to earn or make a living upon it against such person/s. In the light of the admitted fact that the petitioner/accused No.8 is a victim and notwithstanding the fact that she is a victim of prostitution, if further trial is permitted to





continue it would become an abuse of the process of law and result in patent injustice.

9. For the aforesaid reasons, the following:

**ORDER**

- i) The Criminal petition is allowed; and
- ii) The proceedings in C.C.No.1397/2013 pending before the Additional Civil Judge and JMFC, Kundapura, stand quashed.

**Sd/-  
JUDGE**

KG  
List No.: 1 Sl No.: 72