



NEUTRAL CITATION NO. 2025:MPHC-IND:10925

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR**

**ON THE 25th OF APRIL, 2025**

**MISC. CRIMINAL CASE No. 40768 OF 2024**

***NAATI @ PAPI PRATHUMBPHAI AND ANOTHER***

*Versus*

***THE STATE OF MADHYA PRADESH***

**Appearance:**

Shri Rajiv Bhatjiwale advocate along with Shri Vishal Laskhari,  
advocate for the petitioner.

Shri Rajesh Joshi Public Prosecutor for the State.

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**ORDER**

This petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 is presented for quashing of FIR at crime No. 45 of 2021 registered at Police Station, Mahila Thana, Indore and subsequent proceeding in RCT No. 3086/2021 pending before the Judicial Magistrate First Class, Indore.

**2** The exposition of facts, giving rise to present petition, is as under:-

The Crime Branch Indore received secret information that immoral activity and brothel is running at Atoms Salon, Spa and Skin Clinic at Sagun Arcade Building Rasoma Square, Indore. Accordingly, a raid was planned by Sub Inspector Rashmi Patidar alongwith other police officials. The Constable Sudhir Bhadoriya was sent as a punter



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(decoy) with four currency note of denomination Rs. 500/- each and instructed to give them signal on verification of secret information. After receiving the signal from constable Sudhir Bhadoriya, a raid was conducted at Atoms Salon. A woman employee Rukaiyya and Manager Sanjay Verma were found at counter of the Salon. The cash amount of Rs. 2000/- deposited by Constable Sudhir Bhadoriya was recovered from the drawer of the counter. On search of the Salon, petitioners were found in compromising position with male clients. Both the petitioners informed that they are involved in prostitution for money. They frequently engage in illegal activities at the spa and get a share of the customer fees. The mobile phones of the petitioners and customers Anil Bhansoli and Sachin Naik were seized. Some packets of condoms were also seized from the spa. The petitioners were arrested on the spot. The P.S. Mahila Thana, Indore registered FIR at crime No. 45/2021 for the offence punishable under Sections 3,4,5 & 6 of the Immoral Traffic (Prevention) Act, 1956. Relevant seizures were made at the instance of Manager Sanjay Verma. The statements of all the accused were recorded under Section 27 of the Evidence Act. On completion of investigation, prosecution for offence punishable under Section 7 of the Immoral Traffic (Prevention) Act, 1956 was added and final report was submitted before the Court of Judicial Magistrate First Class, Indore. The trial is underway.

**3** The impugned FIR is assailed in present petition on following grounds:-

**A** The petitioners have been falsely implicated. The allegation that they were found in compromising position and involved in



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immoral activity are baseless and not supported by any credible evidence.

**B** There is no *prima facie* evidence to support the allegation for offence punishable under Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956. There is no evidence collected during investigation to show that petitioners were habitually involved in prostitution or they were part of any organized illegal activity. There is no evidence that the petitioners are conspirators in running the prostitution racket.

**C** In absence of any evidence suggesting that the petitioners were involved in organizing or promoting illegal activity at the premises, they deserved to be treated as victims of exploitation rather than the offender.

**D** The raid was conducted in violation of Section 15 of the Immoral Traffic (Prevention) Act, 1956.

**E** The alleged offences are not made out against the petitioners.

**4** On these grounds, it is prayed that impugned FIR dated 23.2.2021 registered at crime No. 45/2021 at the P.S. Mahila Thana be quashed alongwith subsequent proceedings.

**5** Learned counsel for the petitioners in addition to the grounds mentioned in the petition contends that there is no material to show that the petitioners were involved in sexual activity for commercial purposes except their own confessional statement recorded under Section 27 of the Evidence Act. Further, there is no evidence that the alleged act of prostitution was carried on within the notified area or in the vicinity of specified public places. Therefore, the offence punishable under section



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7 of the Act is not made out against the petitioners.

6 *Per-contra*, learned counsel for the State submits that the petitioners were found in compromising position with customers in a room at the Atoms Salon, Spa and Skin Clinic run at a public place in Sagun Arcade Building, therefore, the alleged offence is *prima facie* made out. The petition is meritless.

7 Heard both the parties. Perused the case diary and the final report submitted by the P.S. Mahila Thana on completion of investigation.

8 In case of State of *Haryana v. BhajanLal* reported in *1992 Supp (1) SCC 335*, the Supreme Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 Cr.P.C to quash the proceedings, as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) CrPC.

(5) Where the allegations made in the FIR or complaint are so absurd and



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inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

**9** In the case of *Madhavrao Jiwajirao Scindia Vs Sambhajirao Chanrojirao Angre* reported in *1988 (1) SCC 692*, the Supreme Court has held as under:

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into considerations any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

**10** The erstwhile legislation “the Suppression of Immoral Traffic in Women and Girls Act, 1956” defined “prostitution” as under:-

“prostitution” means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression “prostitute” shall be construed accordingly.”

**11.** The definition of prostitution as well as the title of the Act underwent significant change *vide* the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986. The existing Immoral Traffic (Prevention) Act, 1956 defines prostitution as under:-

2(f) “prostitution” means the sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly.”



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Thus, 'prostitute' shall be construed to be victim of sexual exploitation or abuse for commercial purposes. A victim cannot be prosecuted as an accused of prostitution.

**12.** The aim and object of the Act is not to abolish prostitutes or the prostitution as such and make it a criminal offence or punish a person because he/she prostitutes himself/herself, the purpose of the Act is to inhibit or abolish commercialized vice that is the traffic in persons for purpose of prostitution as an organized means of living. However, Section 7 of the Act makes punishable the practice of prostitution in or in the vicinity of certain public places such as places of public religious worship, educational institutions, hospital etc.

**13** The Apex Court in **Budhadev Karmaskar Vs. State of West Bengal 2022 SCC Online SC 704** issued direction with regard to rehabilitation measures in respect of sex workers as under:-

“5. After conducting a detailed discussion with all the concerned stakeholders, the Panel submitted a comprehensive report on the terms of reference. When the matter was listed in the year 2016, this Court was informed that the recommendations made by the panel were considered by the Government of India and a draft legislation was published incorporating the recommendations made by the panel. Thereafter, periodically adjournments were taken by the Union of India on the ground that the Bill is on the anvil. As the legislation has not been made till date even though the recommendations were made by the Panel in the year 2016 and the said recommendations have to be implemented, we are exercising our powers conferred under [Article 142](#) of the Constitution of India, to issue the following directions which will hold the field till a legislation is made by the Union of India. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role.

**6.** The directions that are issued today relate only to the rehabilitation



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measures in respect of sex workers and other connected issues. The panel has recommended in respect of the third term of reference in the following terms:

(i) Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases, on the basis of ‘age’ and ‘consent’. When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action.

There have been concerns that police view sex workers differently from others. When a sex worker makes a complaint of criminal/sexual/any other type of offence, the police must take it seriously and act in accordance with law.

ii) Any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault, including immediate medical assistance, in accordance with Section 357C of the Code of Criminal Procedure, 1973 read with “Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence”, Ministry of Health and Family Welfare (March, 2014).

**iii) Whenever there is a raid on any brothel, since voluntary sex work is not illegal and only running the brothel is unlawful, the sex workers concerned should not be arrested or penalised or harassed or victimised.**

iv) The State Governments may be directed to do a survey of all ITPA Protective Homes so that cases of adult women, who are detained against their will can be reviewed and processed for release in a time-bound manner.

v) It has been noticed that the attitude of the police to sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised. The police and other law enforcement agencies should be sensitised to the rights of sex workers who also enjoy all basic human rights and other rights guaranteed in the Constitution to all citizens. Police should treat all sex workers with dignity and should not abuse them, both verbally and physically, subject them to violence or coerce them into any sexual activity.

vi) .....

vii) .....”

**14** The material on case diary is examined in the light of aforesaid



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preposition of law.

**15** Section 3 of the Act, 1956 provides punishment for keeping a brothel or allowing the premises to be used as brothel. Section 4 provides punishment for living on the earning of prostitution. It provides that any person who knowingly lives wholly or in part on the earnings of prostitution of “any other person” shall be punished with imprisonment. The words “any other person” were inserted by Amendment Act No. 44 of 1986. Thus, the existing provision provides punishment for living on earning of prostitution of any other person. Section 5 provides punishment for procuring, inducing or taking person for the purpose of prostitution. Hence, the person who is alleged to be a prostitute is not liable under Section 5 of the Act. Section 6 of the Act provides punishment for detaining a person in premises where prostitution is carried on.

**16.** The allegations against the petitioners relate to indulging in the act of prostitution. Therefore, the offences punishable under Sections 3, 4, 5 or 6 the Immoral Traffic (Prevention) Act, 1956 are *prima facie* not made out against the petitioners.

**17.** Section 7 of the Act, 1956 provides as under:-

**“7. Prostitution in or in the vicinity of public places.—**

**(1)** Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend





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to three months.

(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in subsection (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), 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 may be used for prostitution, or is wilfully a party to such use,

shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of



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such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.”

**18** Thus, the provision prohibits the act of prostitution carried on in any premises which falls within the area notified under subsection 3 or within 200 meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place as may be notified by the Commissioner of Police or Magistrate in the manner prescribed.

**19** The notification issued under Sub-section 3 of Section 7 of the Act is not submitted with the final report to show that the Atoms Salon, Spa and Skin Clinic, at the Sagun Arcade Building falls within the periphery notified by the State Government or the Commissioner of Police. There is no evidence to indicate that Shagun Arcade building is within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital or nursing home. Thus, the essential ingredient for constituting the offence punishable under Section 7 of the IT(P) Act, 1956 is missing in the prosecution.

**20** The material on case diary merely alleges that the petitioners were found in a room in a compromising position with male partners. There is no material indicating commercial transaction between the petitioners and their male partner, except their statements recorded under Section 27 of the Evidence Act, which are not admissible as evidence in view of Section 25 of the Evidence Act. The petitioners do not fall within the purview of “prostitute” as defined under Section 2(f) of the Act. In view of the above discussion, the offences punishable under sections 3, 4, 5, 6



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& 7 of the Immoral Traffic (Prevention) Act, 1956 are not *prima facie* made out against the petitioners. Thus, the uncontroverted allegations in the FIR and the material collected during investigation do not disclose commission of alleged offence and make out a case against the petitioners/accused. The chances of conviction in the matter are, apparently, bleak. No useful purpose is likely to be served by allowing the prosecution to continue in the matter.

**21** Consequently, the inherent power under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 is invoked to prevent the abuse of process of the Court and FIR at crime No. 45/2021 registered at the P.S. Mahila Thana, Indore alongwith subsequent proceedings in RCT No. 3086/2021 pending before the Judicial Magistrate First Class, Indore are quashed with reference to the petitioners. The petitioners stand discharged.

Let a copy of this order be sent to the concerned Police Station for information and compliance.

**C.C as per rules.**

**(SANJEEV S KALGAONKAR)**

BDJ

**JUDGE**