

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF MARCH, 2024

MISC. CRIMINAL CASE No. 15353 of 2022

BETWEEN:-

**RISHABH KHARE S/O RAJKUMAR
KHARE, AGED ABOUT 26 YEARS,
OCCUPATION: EVENT
MANAGEMENT PURANI BASTI
BILAHRI, POLICE STATION GORA
BAZAR, DISTRICT JABALPUR
(MADHYA PRADESH)**

....PETITIONER

(BY SHRI R.K.SEN - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION
SANJEEVANI NAGAR POLICE
STATION SANJEEVANI NAGAR
(MADHYA PRADESH)**

....RESPONDENTS

(BY SHRI MOHAN SAUSARKAR – GOVT. ADVOCATE)

*This application coming on for admission this day, the court passed
the following:*

ORDER

1. On 13.3.2024 the following order was passed :-

“The moot question for consideration is as to whether the customer, who had paid money for procuring a girl can be punished under Sections 5 & 6 of Immoral Traffic (Prevention) Act, 1956 or not?”

Counsel for petitioner has relied upon a judgment passed by coordinate Bench of this Court in the case of **Naman Laddha vs. State of Madhya Pradesh** decided on **19.12.2022** in **MCRC No.34970/2022 (Indore Bench)**. However, it appears that there was no allegation that customer had procured a girl by making payment of some money, whereas in the present case there are allegations that applicant had paid money for procuring the girl.

Faced with such a situation, counsel for applicant prays for time to make further preparations.

Time granted.

List in the **next week**".

2. It is submitted by counsel for the applicant that arguing counsel is out of station and prayed for time.
3. Prayer for adjournment was refused for the simple reason that the case was already argued extensively on 13.3.2024 and this Court had adjourned the case only at the request of counsel for the applicant to point out as to whether the ingredients of procuring a person for the purpose of prostitution would be an offence under section 5 of the Immoral Traffic (Prevention) Act, 1956, (hereinafter referred to as 'the 1956 Act') or not ? This query was raised by this Court on the ground that a material was collected by the prosecution that the applicant had paid money for procuring a girl for prostitution.
4. The facts of the case, in short, are that an information was received on 6.1.2021 that prostitution is going on and accordingly, a search was carried out in the house of co-accused Deependra Vishwakarma @ Vicky. When the raiding party went inside the house, then they found that Deepesh Vishkarma was sitting in a hall on a sofa and four more persons were sitting along with him, whose names were Prakhar Dubey

@ Shubham Pandit, Neelesh Patel, Akshay Barman and Akshay Patel. The punter, who was sent in advance by the police, namely Deepak Tiwari, was also found there. In one room, one boy and girl were found in an objectionable condition who disclosed their names as X and Abhinav Lodhi and two packets of unused condoms and one used condom were recovered. When the other room was opened, again one girl and one boy were found in objectionable condition, who discloses their names as Y and Rishabh Khare (the applicant). Again two packets of condoms were recovered and used condom was also found under the bed. They informed that they have taken a room on rent from Deepesh Vishwakarma and by making payment, the girl has been provided by Prakhar Dubey and Nilesh Patel. Search of the accused persons was carried out and an amount of Rs.6,000/- was recovered from Deepesh Vishkarma including five currency notes, which were given by punter (a witness, which was sent by the police in advance to verify the information). Similarly, money was recovered from other co-accused persons. Rs.600/- and a mobile phone was also recovered from the possession of the applicant. Accordingly, the police after registering the FIR has filed the charge-sheet for offence under section 3, 4, 5 and 6 of the 1956 Act. By the impugned order dated 15.3.2021, JMFC, Jabalpur framed the charge for the offence under section 5 and 6 of the 1956 Act.

5. Being aggrieved by the aforesaid order, the applicant preferred revision which too has been dismissed by order dated 28.7.2021 passed by 18th A.S.J. Jabalpur in Criminal Revision No.125/2021.
6. Challenging the order framing charge, it is submitted by counsel for the applicant that a co-ordinate Bench of this Court by **order dated**

19.12.2022 passed in the case of **Naman Laddha Vs. State of Madhya Pradesh in M.Cr.C.No.34970/2022 (Indore Bench)** has held that a customer cannot be prosecuted. Similarly, reliance was placed on the judgment of Orissa High Court in the case of **Bikas Kumar Jain and another Vs. State of Odisha** passed on **9.2 2024 in CRLMC No.3390/2023** wherein it is held that customer cannot be punished for offence under section 5 and 6 of the 1956 Act. Similarly, counsel for the applicant has also relied upon judgment passed by the Kerala High Court in the case of **X Vs. State of Kerala**, decided on **21.12.2023 in Criminal Revision Petition No.1208/2023**.

7. Per contra, the petition is vehemently opposed by counsel for the State. It is submitted that procuring a person for the purpose of prostitution is also an offence. There is evidence available on record that the applicant has paid money for procuring a girl. Therefore, the trial court has rightly framed the charge under sections 5 and 6 of the 1956 Act.
8. Heard the learned counsel for the parties.
9. Although the petitioner has relied upon the judgment passed by the Kerala High Court in the case of **X Vs. State of Kerala**, decided on **21.12.2023 in Criminal Revision Petition No.1208/2023**, but surprisingly, the said judgment is against the applicant. In that case, after considering the meaning of word 'procure' it has been held by the Kerala High Court that the customer is liable to be charged for an offence under section 5 of the 1956 Act. The procurement would necessarily mean to get possession of or to obtain something. If the word 'procure' is considered in the light of the context in which it has been made in the

1956 Act, then it has to be held that even the customer who was found from the spot is liable to be prosecuted for the offence under section 5 of the 1956 Act.

10. So far as offence under section 6 of the 1956 Act is concerned, it speaks about detaining a person in premises where prostitution is carried on. Any person who detains any other person, whether with or without his consent, in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, 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 10 years, and shall also be liable to fine. A person was detained by keeping it in a room which was being used as a brothel and the applicant by making payment of money, has procured the said person for the purpose of prostitution. Even the owner of the house is also being tried.

11. Under these circumstances, whether the detention of the person was with the consent of the applicant or not or whether the act of procuring a person would amount to abetment to commit an offence under section 6 of the 1956 Act are certain aspects which can be considered by the trial court after recording the evidence.

12. It is well established principle of law that in case of a grave suspicion that a person might have committed an offence, the trial court is still within its right to frame the charge.

13. The Supreme Court in the case of **M.E. Shivalingamurthy v. CBI, Bengaluru**, reported in **(2020) 2 SCC 768** has held as under :-

17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. *P. Vijayan v. State of Kerala* [*P. Vijayan v. State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see *State of J&K v. Sudershan Chakkar* [*State of J&K v. Sudershan Chakkar*, (1995) 4 SCC 181 : 1995 SCC (Cri) 664 : AIR 1995 SC 1954]). The expression, “the record of the case”, used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415 : AIR 2005 SC 359]).

14. The Supreme Court in the case of **Soma Chakravarty v. State, through CBI, reported in (2007) 5 SCC 403** has held as under :-

10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the court could form an opinion that the accused *might* have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused *has* committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

19. Some of the questions, however, which have been raised by the appellant are of some importance and it may be necessary to deal therewith. The learned trial Judge, it

appears, did not properly apply its mind in regard to the different categories of the accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exist some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefor or held to be sufficient for framing charge.

15. The Supreme Court in the case of **State (NCT of Delhi) v. Shiv Charan Bansal**, reported in **(2020) 2 SCC 290** has held as under :-

39. The court while considering the question of framing charges under Section 227 CrPC has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence. At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted. Reliance is placed on the judgment of this Court in *State of Bihar v. Ramesh Singh* [*State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] where it has been held that at the stage of framing charges under Sections 227 or 228 CrPC, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused had committed the offence, then the court should proceed with the trial.

40. In a recent judgment delivered in *Dipakbhai Jagdishchandra Patel v. State of Gujarat* [*Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547] decided on 24-4-2019, this Court has laid down the law relating to framing of charges and discharge, and held that all that is required is that the court must be satisfied with the material available, that a case is made out for the accused to stand trial. A strong suspicion is sufficient for framing charges, which must be founded on some material. The material must be such which can be translated into evidence at the stage of trial. The veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged at this stage, nor is any weight to be attached to the probable defence of the accused at the stage of framing charges. The court is not to consider whether there is sufficient ground for conviction of the accused, or whether the trial is sure to end in the conviction.

16. The Supreme Court in the case of **State of Rajasthan v. Fatehkaran Mehdu**, reported in (2017) 3 SCC 198 has held as under :-

26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.

17. Considering the totality of the facts and circumstances of the case and in view of the fact that there is specific allegation that the girl was procured by the applicant for the purpose of prostitution coupled with the fact that there was no such material in the case of **Naman Laddha (supra)**, this Court is of considered opinion that this case is distinguishable from the facts of the case of **Naman Laddha (supra)**.

18. Considering the totality of the facts and circumstances of the case, no case is made out warranting interference.

19. The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

HS