

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition Nos. 4436, 4481, 4537, 4538 & 4547 OF 2023

Between:

Kamsani Rajeshwari and others

... petitioner(s)/accused

And

1. The State of Telangana., rep by
its Public Prosecutor High Court
For the State of Telangana, at
Hyderabad.

... Respondent No.1/State

2. M.Nagi reddy and others

...Respondent No.2/Defacto complainant(s)

DATE OF ORDER PRONOUNCED:

18.06.2024

Submitted for approval.

THE HONOURABLE SMT. JUSTICE K.SUJANA

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|---|--|--------|
| 1 | Whether Reporters of Local
newspapers may be allowed to see the
Judgments? | Yes/No |
| 2 | Whether the copies of judgment may
be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship
wish to see the fair copy of the
Judgment? | Yes/No |

K.SUJANA, J

* THE HON'BLE SMT JUSTICE K.SUJANA

+ CRL.P. Nos. Nos. 4436, 4481, 4537, 4538 and 4547 OF 2023

% Dated 18.06.2024

Kamsani Rajeshwari and others

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...Respondent No.2/Defacto complainant(s)

! Counsel for the Petitioner(s): Ms.Vasudha Nagaraj

^ Counsel for the Respondents: Additional Public Prosecutor for
State

>HEAD NOTE:

? Cases referred

- (1) (1969) 1 SCC 43
- (2) AIR 1992 SC 604
- (3) 2023 Law Suit (SC) 767
- (4) 2023 Live Law (SC) 2022

THE HONOURABLE SMT. JUSTICE K.SUJANA

CRIMINAL PETITION NOS. 4436, 4481, 4537, 4538 AND 4547 OF 2023

COMMON ORDER :

Heard Ms.Vasudha Nagaraj, learned counsel for the petitioner as well as Mr.S.Ganesh, learned Assistant Public Prosecutor for respondent No.1/State

2. Since the issue involved in all these Criminal Petitions are one and the same, these Criminal Petitions are disposed of by way of this Common order.

3. **Crl.P.No.4436 of 2023:** This Criminal Petition is filed by the petitioner-accused No.2 to quash the proceedings against her in S.C.No.81 of 2019 on the file of learned Fast Track Special Court for POCSO Act Cases at Bhongir.

4. **Crl.P.No.4481 of 2023:** This Criminal Petition is filed by the petitioner-accused No.1 to quash the proceedings against her in S.C.No.80 of 2019 on the file of learned Fast Track Special Court for POCSO Act Cases at Bhongir.

5. **Crl.P.No.4537 of 2023:** This Criminal Petition is filed by the petitioners-accused Nos.1 to 3 to quash the proceedings against them in S.C.No.83 of 2019 on the file of learned Fast Track Special Court for POCSO Act Cases at Bhongir.

6. **Crl.P.No.4538 of 2023**: This Criminal Petition is filed by the petitioner-accused No.1 to quash the proceedings against her in S.C.No.85 of 2019 on the file of learned Fast Track Special Court for POCSO Act Cases at Bhongir.

7. **Crl.P.No.4547 of 2023**: This Criminal Petition is filed by the petitioners-accused Nos.1 and 2 to quash the proceedings against them in S.C.No.86 of 2019 on the file of learned Fast Track Special Court for POCSO Act Cases at Bhongir.

8. The brief facts of the cases are that the Police, Yadagirigutta Police Station, Yadadri Division, on receiving credible information as to immoral trafficking of persons conducted search proceedings on 30.07.2018, 09.08.2018 and 19.08.2018 in the house premises of the accused and upon recording the confessions statements of the accused in the relevant mediators reports, registered separate crimes for the offences under Sections under Sections 366(A), 370(1)(5), 370-A, 372, 373, 120-(B), 419, 420, 376 read with 114 of the Indian Penal Code (for short 'IPC') and Section 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'); Sections 3 to 7 of the Prevention of Immoral Trafficking Act (for short 'the PITA Act') and Sections 75 and 81 of Juvenile Justice (Care and Protection of Children) Act (for short 'the JJA Act').

9. Learned counsel for the accused contended that in respect of the charge sheet under Section 366-A of I.P.C, except the children being minor girls and they are under the age of 18 years, there are no ingredients and there is no evidence to state that the accused, induced the children and the children were aware that there was a likelihood of being forced or seduced into illicit sexual intercourse. In respect of the offence under Section 370 (1) (5) of I.P.C., except vague statements made by Listed witnesses who are clearly stock witnesses and who mechanically accused the entire Dommari Community, people of putting their children to prostitution, there is no cogent and substantial evidence in the charge sheet.

10. Learned counsel for the accused further contended that in respect of Section 370-A of I.P.C, there is no evidence that they are subjected to sexual abuse and in respect of Section 372 of I.P.C, which relates to selling of minor for the purpose of prostitution. Even as per the allegations, the accused was alleged for buying the minors, but not alleged for selling the minors for the purpose of prostitution, therefore, it will not attract. In respect of Section 373 of I.P.C, the offence relates to the crime of buying of minors for the purpose of prostitution and the ingredient of the offence require that the accused should have bought, hired or otherwise obtained possession of a minor; but, there is no evidence in the charge sheet to show that accused keeping or managing brothel house, that

accused bought minor girls with an intention to put them into prostitution.

11. Learned counsel for the accused asserted that there is no *iota* of evidence in the charge sheet to prove the offences punishable under Section 120-B I.P.C as alleged and without application of mind, they filed the charge sheet. Further, Section 17 of POCSO Act was instigated, which defines solely abetment of any offence under the POCSO Act alone in the charge sheet is utterly incomprehensible, which shows that mechanical work of the Investigating Officer.

12. Further, inclusion of Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 is peculiar, as there is no allegation against the accused, that they were indulged in flesh trade and that they were allowing their premises to be used as a brothel and living on the earnings of prostitution. Therefore, the said offences do not attract.

13. Further, the Investigating Officer also included the offences punishable under Sections 75 and 81 of the JJ Act. The provisions of the said Sections do not refer to sexual abuse or exploitation which cause to show that Investigating Officer is unable to make up his mind about the allegations in the charge sheet and has randomly picked up every possible offence to implicate the accused. None of the witnesses have spoken about the children being

assaulted, abandoned, abused, exposed or willfully neglected in a manner that caused mental or physical suffering to the children.

14. According to the investigation, the name of the doctor was deleted from the charge sheet as there is no *iota* of material evidence to prove that the doctor has given injections to the children and that there is no basis for the critical allegation in the charge sheet that injections were brought to inject the children in Dommari Community. Equally, there is no evidence on record that the injections were given to the children and further submitted that the F.I.R was registered based on the confession panchanama, has no evidentiary value as it is squarely hit by Sections 25 and 26 of the Evidence Act.

15. The conduct of the seizure panchanama has no validity against the accused as they were not present during the alleged seizure and that the recoveries were not made in consequence of information received from them or at their behest. The alleged recoveries made under the seizure panchanama are not pursuant to the alleged confession made by the accused. Hence, they are not helpful to the prosecution under Section 27 of the Evidence Act. Further, Section 161 Cr.P.C Statements were not filed before the Magistrate concerned at the earliest and they were filed at the time of filing charge sheet, which claims doubt on the investigation.

16. Further, the F.I.R came to be lodged upon the alleged confession made by accused, while it is borne out from by the record that the ACP, Yadadri Division, had credible first information having issued search proceeding to conduct raid on the house of the accused which casts shadow of legal validity on the very foundation of the case. Therefore, there is no evidence to proceed with the case, wherein, the accused were falsely implicated.

17. Learned counsel for the accused further submit that this is clearly a false case registered against the Dommari Caste Women, basing on their community, and that she is taking care of minor abandoned children; The learned counsel, therefore, prayed the Court to quash the proceedings initiated against the accused. In support of her contention, learned counsel for the accused relied upon a decision of this Court rendered in Criminal Revision Case Nos.479 of 2022 and batch, dated 08.12.2023.

18. On the other hand, the learned Assistant Public Prosecutor would submit that the offences alleged against the accused are heinous in nature and the same requires trial and charge sheet has already been filed in all the cases. As such, at this stage, it cannot be quashed. Therefore, prayed the Court to dismiss these Criminal Petitions.

19. Having regard to the rival submissions made by learned counsel for the respective parties and having gone through the

material available on record, the facts of the case are that on receiving the credible information from the Assistant Commissioner of Police, Yadadri Division that the accused were running flesh trade in their house with innocent girls in Ganesh Nagar, Yadagirigutta, as such he along with Listed witnesses went to the house of the accused and bought the minor girls by paying certain amounts. It is alleged that accused being aware of other members of Community, giving injections to expedite the puberty cycle of the girls with the support of the doctor, wished to do the same with the children in their custody. It is further alleged that the accused with an intention of rearing minor girls for prostitution and with the same aim and objective, they were giving hormonal injections to expedite the growth of minor girls and getting them for prostitution.

20. Accused along with the minor girls was taken to the Police Station and from there, the minor girls were sent to a Child Welfare Committee and was arrested for the offences as alleged in the quash petition. The main allegations against the accused is that the they are running a brothel house and she inducted these minor girls and purchased the minor girls by paying certain amounts and also collected DNA report. The DNA report shows that the profile of the accused are not matching with minor girls, as such, they are no way biologically connected to the minor girls.

21. First contention of the accused is that there are no averments in the charge sheet to attract Section 366-A of I.P.C except children being the minors, whereas, the averments in the charge sheet shows that minors were purchased for the purpose of prostitution.

22. Second contention made by the learned counsel for the accused is that except vague statements of Listed witnesses who are stock witnesses, there is no evidence to constitute the offence under Section 370 or 370-A of I.P.C whereas, it is not the stage to decide the veracity of statements of witnesses without conducting trial.

23. Third contention is that Section 372 of I.P.C relates to selling of minor, whereas, according to prosecution, petitioner purchased the minor. Therefore, said provision not applicable to the accused, said aspect will be considered by the trial Court while framing charge.

24. Fourth contention is that, there is no evidence to prove the offence under Section 373 of I.P.C, whereas, the statements of witnesses are with regard to said aspect. Further, accused also contended that the averments do not constitute offences under Section 120-B of I.P.C and Section 17 of POCSO Act, whereas it is not the stage to consider the same, to prove the same it requires trial.

25. Fifth contention is that Sections 3, 4, 5, 6 of PIT Act are not applicable, as there is no evidence against the accused to show that the accused are running brothel house and earning on the prostitution, whereas, the prime allegation against the accused is that, they are running brothel house, therefore, there is no force in the said contention.

26. It is also contended by the learned counsel for the accused is that Sections 75 and 81 of JJ Act do not attract to the accused, whereas, it is not the stage to decide the same.

27. Learned Counsel for the accused also submitted that search and seizure is not in accordance with law and she also relied on the Apex Court Judgment in **Bai Radha Vs. State of Gujarat**¹. Whereas in the said judgment it is observed in paragraph No.10, it is held as follows:-

“10. In conclusion it may be observed that the investigating agencies cannot and ought not to show complete disregard of such provisions as are contained in sub-sections (1) and (2) of Section 15 of the Act. The Legislature in its wisdom provided special safeguards owing to the nature of the premises which have to be searched involving in roads on the privacy of citizens and handling of delicate situations in respect of females. But the entire proceedings and the trial do not become illegal and vitiated owing to the non-observance of or non-compliance with the directions contained in the aforesaid provisions.”

¹ (1969) 1 SCC 43

28. Further, the accused also raised suspicion about the statements of LWs stating that they are fabricated statements. Learned counsel for the accused also suspected the statements of neighborhood witnesses, whereas, the petition under Section 482 Cr.P.C, Court has to see the averments and statements are *prima-facie* constituting the offences, as such it is not the stage to decide the veracity of the statements.

29. The trial Court recorded the statements of the minor girls and they stated that they were kept in hostel. One of the minor girls in her 161 Cr.P.C statement stated that there is full of money in the almirah and her mother used to earn money from men. The 161 Cr.P.C statements of witnesses show that the minor girls are no way related with the accused and the statements show that the accused induced minor girls.

30. It is also revealed that the accused are not biologically connected to the minor girls as per the DNA report. Further, the minor girls themselves stated that they are no way related with the accused. Therefore, there is no abuse of process of law, as such, the law laid down by the Hon'ble Supreme Court in ***State of Haryana vs. Bhajanlal***² whereunder the categories which were illustrated in the above judgment is not relevant to the present case. Further, she relied on the judgment of the Hon'ble Supreme Court in ***Mahmood***

² AIR 1992 SC 604

Ali and Others Vs. State of U.P and Others³, whereas in paragraph No.15, it is clearly stated that observations are not applicable to any other case.

15. *“It is needless to clarify that the observations made in this judgment are relevant only for the purpose of the FIR in question and the consequential criminal proceedings. None of the observations shall have any bearing on any of the pending criminal prosecutions or any other proceedings.”*

Therefore, the above judgment is not applicable to this case.

31. Although learned counsel for the accused also relied on the common order passed by this Court in Criminal Revision Case No.479 of 2022 and Batch, the same is not applicable to the present cases as the minor girls statements are incriminating against the accused.

32. Further, learned Assistant Public Prosecutor relied on the judgment of the Hon’ble Supreme Court in **Central Bureau of Investigation Vs. Aryan Singh Etc.**,⁴ wherein in paragraph No.4.1 it is observed as under:-

“4.1. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini

³ 2023 Law Suit (SC) 767

⁴ 2023 Live Law (SC) 2022

trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

33. In view of the observations made in **Bai Radha** (*Supra 1*), even if there is any deviation in the procedure contained in the provisions, it will not vitiate the proceedings. At this stage Court has to see whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not. In the present cases, though several contentions were raised by the learned counsel for the accused, since the allegations leveled against the accused are serious in nature, which requires trial. Therefore, at this stage, it cannot be decided without conducting proper trial. Therefore, this Court does not find any merit in these Criminal Petitions to quash the proceedings against the accused and the same are liable to be dismissed.

34. In the result, all the Criminal Petitions are dismissed. At this juncture, learned counsel for the accused prayed the Court to grant some relief as the accused intend to approach the Hon'ble Supreme Court with regard to the subject matter. Considering the

submission of learned counsel for the accused, the trial Court is directed not to proceed with the trial till 18.07.2024.

Miscellaneous applications pending, if any, shall stand closed.

K.SUJANA, J

Date: 18.06.2024
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