

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7082 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

Approved for Reporting	Yes	No

KAMLESH HUKAMCHAND VISHNOI
 Versus
 STATE OF GUJARAT & ANR.

Appearance:

MR MOHDSHAFI SHAIKH(6544) for the Applicant(s) No. 1
 MR.KISHAN PRAJAPATI(7074) for the Applicant(s) No. 1
 DS AFF.NOT FILED (R) for the Respondent(s) No. 2
 ROHAN N SHAH APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 18/09/2026

ORAL JUDGMENT

1. The applicant before this court has invoked provisions under Section 482 of the Criminal Procedure Code, 1973, seeking quashment of FIR being C.R. No. II- 3005 of 2010 lodged before the DCB Police Station, Ahmedabad, for offenses punishable under Sections 3, 5, 7, and 9 of the Immoral Traffic Act, 1956, and Section 188 of the Indian Penal Code.

2. The FIR came to be lodged by the Respondent No. 2 on 17.01.2010 interalia mainly stating that the Original Complainant was present at the police station with other police personnel and at that time they received secret information that at Hotel Dev Palace situated at Ashram Road the accused person as named in

FIR in connivance with the Hotel Manager and owner of Hotel running Brothel by calling girl from outside and at that time also activity is going on and therefore, Original Complainant has informed ladies constable of Mahila Police Station and also ask to call punter (Fake Customer).

2.1 It is further stated in the Complaint that after calling fake customer everything was explained to him (Punter) and thereafter the raid was carried out with local panchas and fake customer went inside first and thereafter the Original Complainant with others have carried out raid at the Dev Palace Hotel and wherein one person namely Dasharathsinh Madansinh Sisodiya came to be caught from counter who is manager of hotel and three customer including punter came to be caught from the room and five more customers were caught who are waiting for their turn outside the room and upon inquiry from manager and girl. It is further alleged that Nitin @ Sonu Mehta in connivance with hotel owner Vimalbhai Modi have brought the girls from outside state and running brothel and accordingly the FIR came to be lodged.

3. Learned Advocate Mr. Mahesh Poojara for Mr. Kishan Prajapati would submit that after registration of the FIR, investigation came to be carried out, and after completion of investigation, the charge sheet came to be laid before the concerned court, which came to be numbered as Criminal Case No. 330 of 2010.

3.1 The Applicant came to be arrested as a customer in the present case, and as per the settled principles of this Hon'ble

court, none of the allegations as alleged in the FIR, more particularly Sections 3, 5, 7, and 9 of the said Act, can be invoked against a customer, inasmuch as the investigation agency has shown the present applicant as a customer when the alleged raid was carried out, and under such circumstances, has argued that the present FIR be quashed and set aside.

3.2 Lastly, it was submitted that even if the offense under Section 188 of the IPC is concerned, no role is attributed against the present applicant, and if at all, considering the provisions of Section 195, no cognizance can be taken on an FIR pursuant to which the charge sheet came to be filed, since a private complaint is required to be lodged as per the settled principle, and therefore also, it was argued to allow the present application.

3.3 Per contra, learned Additional Public Prosecutor Mr. Rohan Shah would not dislodge the fact that the present applicant was arraigned as an accused in the charge sheet as a customer and was caught red-handed during the raid, and that as per the settled principle of law, a customer cannot be attributed with the offenses punishable under Sections 3, 5, 7, and 9 of the Immoral Traffic Act.

4. Heard learned Advocates for the respective parties.

4.1 The impugned FIR as well as judgments tendered by the learned Advocate for the Applicant in the case of ***Vishal Bhikhabhai Chavda Versus State of Gujarat reported in 2025(0) AIJEL - HC 252088*** and in the case of ***Sajjan Kalikant Zha Versus State of Gujarat and another reported in***

2026(0) AIJEL-HC 253939, It is an undisputed fact that the present applicant was caught during the raid on the spot, and the present applicant is neither the manager of the brothel, but was caught as a customer during the raid, and therefore, the observations made by the coordinate bench in the cases referred to hereinabove would squarely apply to the facts of the present case.

4.3 More particularly, Section 3 of the said Act, provides punishment for keeping a brothel or allowing premises to be used as a brothel, and thus no prosecution thereunder can be maintained against the present applicant being a customer.

4.4 Section 5 of the said Act, relates to penalties for procuring or attempting to procure a person for the purpose of prostitution, and thus, these provisions are directed against a procurer such as an agent or pimp, and not against a customer, since the word 'procure' connotes obtaining a woman for the purpose of prostitution from a particular individual and not the act of the individual himself.

4.5 Section 7 of the said Act, relates to prostitution in or in the vicinity of public places. In view of the said section, prostitution in itself is not an offense under the Act save as in the manner given in Sections 7 and 8. Therefore, the applicant, by no stretch of imagination, can be charged with the offense under Section 7 of the Act, because to attract the said provisions, the prosecution must prima facie show that prostitution is being carried out. It is only when the first ingredient is satisfied that the question would arise as to whether the prostitution is being carried out in or in

the vicinity of a public place. Thus, when Section 4 of the Act is not applicable to the present applicant, the question of charging the accused with the offense punishable under Section 7 of the Act does not arise.

4.6 As far as Section 9 is concerned on the face of it, it is not applicable in the facts and circumstances of the present case, since for attracting penal provisions under Section 9 of the Act, it has to be shown prima facie that the applicant, having position or authority over any person (that is, a woman or a girl), causes or aids or abets the seduction for prostitution of that woman or girl. There is not an iota of evidence remotely suggesting that the applicant was taking undue advantage of his position or authority over the woman or girl, or caused or aided or abetted the seduction for prostitution of that woman or girl, more particularly when he was caught red-handed as a client while carrying out the raid.

5. Under the circumstances, the captioned petition stands allowed. The impugned FIR being C.R. No. II- 3005 of 2010 lodged before the DCB Police Station, Ahmedabad, for offenses punishable under Sections 3, 5, 7, and 9 of the Immoral Traffic Act, 1956, and Section 188 of the Indian Penal Code, along with all consequential proceedings arising therefrom qua the present petitioner, stands quashed and set aside.

6. Rule is made absolute to the aforesaid extent.

MMP

(P. M. RAVAL, J)