

**THE HONOURABLE SRI JUSTICE N. TUKARAMJI**

**CRIMINAL REVISION CASE Nos.479,  
481, 482, 483, 484, 485, 486, 487, 488 and 489 of 2022**

**COMMON ORDER:**

I have heard Ms.Vasudha Nagaraj, learned counsel for the revision petitioners and Mr. C. Pratap Reddy, learned Public Prosecutor.

2. Having regard to the similitude of facts, accusations, materials relied by the prosecution and the legal aspects are to be considered, these cases are heard and being determined together by way of this common order.

3. **Crl.R.C.No.479 of 2022:** This revision case has been filed by the revision petitioner/Accused No.1 assailing the order dated 24.06.2022 in Crl.M.P.No.67 of 2022 in S.C.No.412 of 2019 on the file of the Assistant Sessions Judge, Bhongir.

4. **Crl.R.C.No.481 of 2022:** This revision case has been filed by the revision petitioners/Accused Nos.1 to 4 assailing the order dated 24.06.2022 in Crl.M.P.No.71 of 2022 in S.C.No.417 of 2019 on the file of the Assistant Sessions Judge, Bhongir.

5. **Crl.R.C.No.482 of 2022:** This revision case has been filed by the revision petitioner/Accused No.1 assailing the order dated 24.06.2022 in Crl.M.P.No.70 of 2022 in S.C.No.416 of 2019 on the file of the Assistant Sessions Judge, Bhongir.
6. **Crl.R.C.No.483 of 2022:** This revision case has been filed by the revision petitioners/Accused Nos.1 and 2 assailing the order dated 24.06.2022 in Crl.M.P.No.66 of 2022 in S.C.No.410 of 2019 on the file of the Assistant Sessions Judge, Bhongir.
7. **Crl.R.C.No.484 of 2022:** This revision case has been filed by the revision petitioner/Accused No.1 assailing the order dated 24.06.2022 in Crl.M.P.No.69 of 2022 in S.C.No.414 of 2019 on the file of the Assistant Sessions Judge, Bhongir.
8. **Crl.R.C.No.485 of 2022:** This revision case has been filed by the revision petitioner/Accused No.1 assailing the order dated 24.06.2022 in Crl.M.P.No.87 of 2022 in S.C.No.418 of 2019 on the file of the Assistant Sessions Judge, Bhongir.
9. **Crl.R.C.No.486 of 2022:** This revision case has been filed by the revision petitioner/Accused No.1 assailing the order dated

24.06.2022 in Crl.M.P.No.65 of 2022 in S.C.No.408 of 2019 on the file of the Assistant Sessions Judge, Bhongir.

10. **Crl.R.C.No.487 of 2022:** This revision case has been filed by the revision petitioner/Accused No.1 assailing the order dated 24.06.2022 in Crl.M.P.No.90 of 2022 in S.C.No.415 of 2019 on the file of the Assistant Sessions Judge, Bhongir.

11. **Crl.R.C.No.488 of 2022:** This revision case has been filed by the revision petitioners/Accused Nos.1 to 3 assailing the order dated 24.06.2022 in Crl.M.P.No.72 of 2022 in S.C.No.419 of 2019 on the file of the Assistant Sessions Judge, Bhongir.

12. **Crl.R.C.No.489 of 2022:** This revision case has been filed by the revision petitioners/Accused Nos.1 to 3 assailing the order dated 24.06.2022 in Crl.M.P.No.68 of 2022 in S.C.No.413 of 2019 on the file of the Assistant Sessions Judge, Bhongir.

13. For the sake of facility, the revision petitioners hereinafter referred as 'the accused'.

**Factual Background:**

14. The Police, Yadagirigutta Police Station, Yadadri Division, on credible information as to immoral trafficking of persons conducted search proceedings on 30.07.2018, 09.08.2018, 17.08.2018, 31.08.2018, 14 and 16.10.2018 in the house premises of the accused and upon recording the confessional statements of the accused in the relevant mediators reports, registered separate crimes for the offences under Sections 366 (A), 370(1) & (5), 372, 373 of the Indian Penal Code, 1860 (for short 'the IPC'), Section 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') and Sections 3, 4, 5 and 6 of Immoral Traffic (Prevention) Act, 1956 (for short 'the ITP Act') and Sections 75 & 81 of the Juvenile Justice (Care and Protection of Children) Act, 1956 (for short 'the JJ Act') and placed the matters on the file of designated POCSO Court/the I Additional Sessions Judge, Nalgonda.

15. The POCSO Court/I Additional Sessions Judge, Nalgonda vide orders dated 27.06.2019 by holding that the matters are not

making out offence under Section 17 of the POCSO Act, 2012, relegated the files to the Magistrate concerned. Thereupon, the learned Magistrate took cognizance of the offences under Sections 366(A), 120-B, 370-A, 370(1) & (5), 372, 373 of the IPC and Sections 3, 4, 5, 6 of the ITP Act, Sections 75 & 81 of the JJ Act in all the crimes and committed the matter to the Sessions Division. In due course, these matters were made over to the Assistant Sessions Judge, Bhongir for disposal in accordance with law.

16. Afterwards, the accused filed petitions under Section 227 of the CrPC for discharge in the respective Sessions Case. The learned Assistant Sessions Judge by observing that the police rescued the minor girls from the custody of the accused and the accused's confessional statements in regard to the offences and the reports of the DNA (*Deoxyribonucleic acid*) examination are revealing that the rescued minors are not biologically related to the accused, concluded that there is prima facie material against the accused and the contest in defence that the materials placed by the prosecution is stereotyped in all the cases cannot be considered at the stage of discharge applications, dismissed all the petitions vide impugned

orders as mentioned above. Aggrieved thereby, the accused preferred the related revision cases.

**Submissions of the accused:**

17.1 Learned counsel for the accused has vehemently pleaded that the learned Assistant Sessions Judge failed to properly appreciate the pleadings and there is no direct or circumstantial evidence even remotely to connect the accused with the alleged offences in the final report. Further, except the alleged confessional statements in regard to the facts or circumstances purported against the accused by the prosecution, no legally acceptable material has been placed on record. As the confessional statements of the accused are inadmissible and the other oral statements of the witnesses are pointless and vague, the accusations are evidently insufficient to make out any case. On this aspect cited an authority between Deepakbhai Jagdishchandra Patel v. State of Gujarat and another – (2019) 16 SCC 547 and pleaded that the Hon'ble Apex Court has held that the confession before the police officer and confession of co-accused when uncorroborated by any other material no strong suspicion would arise against the accused.

17.2 Further pleaded that recovery of condoms from the house of the accused during the search proceedings does not prove either trafficking of a person or the house is brothel. In this regard by placing reliance on *Budhadev Karamskar v. State of West Bengal and others* – 2022 SCC Online SC 704 pleaded that the Hon’ble Apex Court has held that the use of condoms must neither be construed as offence nor seen as evidence of commission of sexual offence and in *Gourav Jain v. Union of India and others* – (1997) 8 SCC 114, in *Bhulu Mia v. The State* AIR 1969 Calcutta 416, *Krishnamurthy @ Tailor Krishnan v. Public Prosecutor, Madras* – AIR 1967 SC 567 it was held that to prove the brothel it is essential to prove that a girl/lady should be a person offering her body for promiscuous sexual intercourse and for conviction under Section 3 or 7 of the ITP Act rests on finding that premises is a brothel.

17.3 Further pleaded that mere custody of a child who is not biologically related per se will not attract penal action as held in *Helen Anitha and another v. Inspector of Police, Vadaseri Police Station, Nagercoil, Kanyakumari District and another* dt.10.10.2018 in *CrlOP (MD) No.154/2017* and *CrlMP (MD) No.10237/2017* –

MANU/5910/2018 and that the High Court of Madras while considering a situation, where a lady/accused who came across an abandoned child takes and starts nourishing it as her own child cannot be branded as an accused and as the adoption of child was not in accordance with law.

17.4 Furthermore, the minor girls who said to have rescued were being educated by the accused and in the statements before the Magistrate under Section 164 of CrPC none of them had stated any fact or circumstance even to presume occurrence of any alleged offence much less to say that they were trafficked or seduced. Unless there is an exploitation and trafficking is established under Section 360 or 366-A of the IPC would not attract. To substantiate relied on an authority between Rajkumar v. State of Karnataka represented by State Public Prosecutor and another – 2022 SCC Online Kar. 660 to project that in absence of any allegation that the victim was exploited by the accused, prosecution under Section 370 of the IPC is untenable. In Sajjan Kapar v. State of Bihar (2005) 9 SCC 426 it was held that, for application of Section 366-A of the IPC a minor girl should have been induced with an intent that such



girl may be seduced to illicit intercourse with another person is liable for punishment.

17.5 Learned counsel also pleaded that in *Kumari Sangeetha v. State and another* – 1995 CrLJ 3923 it was held that in absence of any evidence on record that the persons were indulging in prostitution as per Section 2(f) of the ITP Act and any evidence as to running brothel prosecuting the accused would be unjust merely on the premise that the accused belong to a particular caste.

17.6 It is asserted that the onus is always on the prosecution to prove all the ingredients of the offence and at no stage shifts to the accused and until such burden is discharged and even if the onus is shifted, if the defence is probabalised the accused is entitled for acquittal. In addition, referred to *Union of India v. Prafulla Kumar Samal and another* 1979(3) SCC 4 to point out the scope of examining the petition for discharge under Section 227 of the CrPC. Thus urged that, before acting upon the prosecution case against the accused the Court is bound to exercise the judicial mind to find out prima facie case in the materials placed on record for continuance of proceedings against the accused lest the action

would be abuse of process of law. Therefore, prayed for intervention.

**Submissions of the prosecution:**

18.1 Learned Public Prosecutor pleaded in support of the impugned order. Further submits that the confessional statements, the DNA report, the evidence of the witnesses examined by the police are proving that the minor girls/victims who were rescued are biologically distinct to the accused, which is making out strong suspicion against the accused. By citing the State of West Bengal v. Mir Mohammed Omar and others – 2000(2) ALD CrI.718 (SC) pleaded that while considering the incriminating circumstances, presumption of fact or an inference as to the existence of some other facts unless truth of such inference is disproved is permissible under Section 114 of the Indian Evidence Act. As such, the Court can exercise the process of reasoning of a logical conclusion as the probable position. Therefore, by the materials on record against the accused the Court may presume existence of a fact of things likely to be happened. Further pleaded in Shanshyam Sharma v. Surendra Kumar Sharma and others - AIR 2014 SCW 5969 it has

been held that when there is material making out some offence though not the charged one quashment of proceedings would not be proper as the guilt is to be proved in trial and the Court may frame appropriate charge basing on the materials.

18.2 Therefore, in the present case keeping the abandoned child with the accused may also liable for penal action and the Court may frame appropriate charge. Thus discharging the accused without considering the veracity of the offence would be improper. Hence prayed for dismissal of the revision cases.

**Analysis:**

19. I have carefully considered the rival submissions of the learned counsel and perused the materials on record.

20. The core case of the prosecution is that as per the credible information about human trafficking, on search, and query the accused said to have made statement of admission that they have purchased the minor girls from the accused No.2/Kamsali Shanker who is no more, with a view to put those minor girls into prostitution by catalyzing their puberties with hormonal injections. Further during search, they found some condom packets from the

respective houses of the accused. After the investigation the prosecution came up with final report relying on (a) the confessional statements of the accused; (b) recoveries of condom packets from the houses of the accused; (c) rescue of minor girls from the houses of the accused; (d) the DNA reports proving biological distinction of the minor girls with the accused; (e) statements of the witnesses and (f) statements of rescued minor girls.

21. Before examining the merits, it would be apposite to note the principles laid down by the Hon'ble Supreme Court in *Union of India v. Prafulla Kumar Samal and another 1979(3) SCC 4* while considering the jurisdiction of discharge of the accused under Section 227 of the CrPC, as hereunder:

“11. The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of charge sheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced

by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reason to hold that in case the Criminal Appeal No. 1399 of 2023 trial is allowed to proceed, the same would amount to abuse of process of the Court.”

This legal position has been reiterated in the authority *Deepakbhai Jagdishchandra Patel v. State of Gujarat and another – (2019) 16 SCC 547* and in recent decision in *Manjit Singh Viridi v. Hussain Mohammed Shattaf – 2023 SCC Online SC 653*, wherein it was held thus:

“11. The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of charge sheet, application for

discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reason to hold that in case the Criminal Appeal No. 1399 of 2023 trial is allowed to proceed, the same would amount to abuse of process of the Court.”

22. In the light of the above settled legal principles, the material placed by the prosecution needs examination.

**(a) the confessional statements/admission of the accused:**

As per the investing agency during search proceedings the accused made statements of admission which were recorded in the presence of mediators basing on which the crime has been registered. As per Section 17 of the Indian Evidence Act, 1873 a

statement which suggests any inference to any fact, any issue or relevant fact under such circumstances is an admission. Section 25 of the Indian Evidence Act, 1873 stipulates that the statements of accused before the police during the course of investigation shall not be proved against him. However, the question would arise that the statements made by the accused even prior to registration of crime can be proved against him. The Hon'ble Supreme Court in *Aghnu Nagesia v. State of Bihar – 1966 CrLJ 100* had an occasion to consider similar aspect, as to that whether a confessional first information statement given by the accused is receivable in evidence against him. After extensively referring to divergent opinions of the High Courts held that the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and formal part of identifying the accused but no part of it could be tendered in evidence. This being the settled legal position the statements of the accused which is in the nature of confession, cannot be proved against him. Therefore, this material is not of any use to prove any fact against the accused.

**(b) Recoveries of condom packets from the houses of the accused:**

The investigating agency in search proceedings they found condom packets and certain amount in the houses of the accused except from the accused in Crl.R.C.Nos.482, 4878 and 488 of 2022. Pertinently none of the minor girls were found in the house premises during the search proceedings and there is not even whisper as to keeping brothel or any woman promiscuously offering body for payment. In such circumstance merely on recovery of condom packets presuming commission of any sexual offence or the premises being brothel or any trafficking offence would be beyond reason. The relevant authorities cited by the accused are supporting this view. Hence the alleged recoveries are evidently falling short to conclude any adverse fact much less the indicted offences against the accused.

**(c) & (f) Rescuing of minor girls from the houses of the accused and their statements:**



According to the prosecution the minor girls were rescued from the care and custody of the accused and they were secured from the premises other than the respective homes of the accused. All of them were shifted to child homes, Whereafter about four months, the learned Magistrate had recorded their statements under Section 164 of Code of Criminal Procedure, 1973. The minor girls categorically referred to their parentage/relationship with the accused. As per their statements, all of them were being sent to schools and most of them are in the hostels. None of them reported any seductions or sexual exploitation or administration of any medication of any kind on them by the accused at any point of time. Therefore, rescue of minor girls from the custody of the accused and the statements of those girls *per se* are not leading to any adverse fact or circumstance against the accused.

**(d) The DNA reports proving biological distinction of the minor girls with the accused:**

The claim of the prosecution is that as the DNA reports are indicating that the accused are not biologically related to the rescued girls, the accusation of trafficking can be inferred, is not

found acceptable, for the reasons that merely as there is variance in the DNA finding, trafficking or commission of any sexual offence or the intention of the accused to commit the offence cannot be presumed unless there is prima facie material supporting the foundational facts. As per final report the accused said to have bought the minor girls at a price from one Kamsani Shanker/A-2. In this regard except the alleged statement of admission of the accused, no other fact or circumstance is found in the record. That apart the rescued girls had categorically made statements as to their relationship with the accused and as mentioned above nothing unfavourable statement was made against the accused.

Even in contrast if the accused are taking care of a child as of their own and taking all the care including imparting education does not *per se* make them offenders until a situation within the scope of any offence is made out. The materials collected in the investigation are not leading to any such fact or circumstance.

In the absence of any other material showing that the minor girls were illegally procured or trafficked by the accused, exclusively

relying on DNA variation presuming the alleged offence by the prosecution would be untenable.

***(e) Statements of the witnesses:***

As per the final reports in all the sessions cases prosecution has examined a set of witnesses who participated in raid or search proceedings. Their statements are in regard to surprising in the premises of the accused and the contents of their statements of admission. There cannot be any dispute as to conducting raid and search and participation of these witnesses. Nonetheless their statements cannot validate the confessional statements of the accused. Excluding the statements of admission no material aspect remains in the evidence of these witnesses against the accused.

23. The other set of witnesses are the residents of same locality who mentioned about the families of the accused community and the visits of people in to the houses of accused community and their indecent behaviour against them and because of the accused community people, the people are getting infractions. The version of these witnesses is not pointing out any circumstance or fact against the accused as their statements are in general terms.

24. The other set of two witnesses in all the sessions cases stated that some of the women of Dommara caste are into prostitution and they procure girls from outside to conduct prostitution in their houses. In addition, specifically referred the names of the accused and about conducting prostitution by securing other woman and rearing with minor girl to put her into prostitution and to earn money. Though the statements are referring to the accused, nothing is pointed showing source of their knowledge particularly the evidence collected by the police is not making out any fact or circumstance to presume the commission of alleged offence by the accused or conduct of brothel or prostitution by the accused. In such circumstances, the rhythmic statements of the witnesses in all the cases are not giving rise to any grave suspicion to proceed against the accused.

25. A survey of the above noted aspects are not making out any prima facie material to strongly suspect conspiracy of the accused in procuring/buying/trafficking the minor girls by abduction or any other means for the purpose of prostitution or allowing their premises as brothel or living on the earnings of prostitution.

Essentially, no minor girl had stated that they were forced or seduced or sexually exploited or suffered cruelty at the instance of the accused.

26. For the aforesaid, merely as there is biological variance in the DNA reports and two of the witnesses had referred the names of the accused without any validating circumstances particularly in absence of any material indicating commission of any alleged offence and involvement of the accused, continuation of further proceedings would be unjust. Thus it shall be held that the trial Court had erred in assessment of the materials placed on record by the prosecution and this impropriety deserves to be rectified in the revisions, as continuation of the proceedings against the accused would be an abuse of process of law. Accordingly the discharge applications of the accused deserves to be allowed.

27. **In the result,** Crl.R.C.No.479 of 2022 is allowed. The order dated 24.06.2022 passed in Crl.M.P.No.67 of 2022 in S.C.No.412 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioner/Accused No.1 is discharged for the offences with which he is charged.

28. **In the result,** Crl.R.C.No.481 of 2022 is allowed. The order dated 24.06.2022 in Crl.M.P.No.71 of 2022 in S.C.No.417 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioners/Accused Nos.1 to 4 are discharged for the offences with which they are charged.

29. **In the result,** Crl.R.C.No.482 of 2022 is allowed. The order dated 24.06.2022 in Crl.M.P.No.70 of 2022 in S.C.No.416 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioner/Accused No.1 is discharged for the offences with which he is charged.

30. **In the result,** Crl.R.C.No.483 of 2022 is allowed. The order dated 24.06.2022 in Crl.M.P.No.66 of 2022 in S.C.No.410 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioners/Accused Nos.1 and 2 are discharged for the offences with which they are charged.

31. **In the result,** Crl.R.C.No.484 of 2022 is allowed. The order dated 24.06.2022 in Crl.M.P.No.69 of 2022 in S.C.No.414 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and

the revision petitioner/Accused No.1 is discharged for the offences with which he is charged.

32. **In the result,** Crl.R.C.No.485 of 2022 is allowed. The order dated 24.06.2022 in Crl.M.P.No.87 of 2022 in S.C.No.418 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioner/Accused No.1 is discharged for the offences with which he is charged.

33. **In the result,** Crl.R.C.No.486 of 2022 is allowed. The order dated 24.06.2022 in Crl.M.P.No.65 of 2022 in S.C.No.408 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioner/Accused No.1 is discharged for the offences with which he is charged.

34. **In the result,** Crl.R.C.No.487 of 2022 is allowed. The order dated 24.06.2022 in Crl.M.P.No.90 of 2022 in S.C.No.415 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioner/Accused No.1 is discharged for the offences with which he is charged.

35. **In the result,** CrI.R.C.No.488 of 2022 is allowed. The order dated 24.06.2022 in CrI.M.P.No.72 of 2022 in S.C.No.419 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioners/Accused Nos.1 to 3 are discharged for the offences with which they are charged.

36. **In the result,** CrI.R.C.No.489 of 2022 is allowed. The order dated 24.06.2022 in CrI.M.P.No.68 of 2022 in S.C.No.413 of 2019 on the file of the Assistant Sessions Judge, Bhongir is set aside and the revision petitioners/Accused Nos.1 to 3 are discharged for the offences with which they are charged.

As a sequel, miscellaneous petitions, pending if any, stands closed.

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**N. TUKARAMJI, J**

**Date:08.12.2023**

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