



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION (ST.) NO. 20 OF 2017**

Rescue Foundation & Ors. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. Mihir Desai, Senior Advocate a/w Ms. Pritha Paul i/by
Mr. Chetan Mali for petitioners.

Mr. A. R. Patil, APP for State.

Mr. Sandesh D. Patil a/w Mr. D. P. Singh for respondent
nos.4 and 5.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 4th OCTOBER, 2023

P.C.:

1. The affidavit filed on behalf of respondent no.4 is taken on record.
2. Having ratified an International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others, the Central Legislature had initially enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956, nomenclature of which has been changed with effect from 26th January, 1987 and the Act is now known as "The Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "the Act of 1956"). The legislative measure taken by the central legislation aims at preventing human trafficking and acts as a deterrent as well, however, it appears that the statutory mechanism as provided for in the Act of

1956 is not in place on the ground. Such situation appears to have given rise to this Public Interest Litigation petition which has been filed with several prayers. The prayer clauses of the PIL petition are extracted hereinbelow: -

- a) *For a Writ of Mandamus or a writ or order or direction in the nature of Mandamus or any other appropriate writ or order or direction directing the Respondents and its Investigating Agencies that every offence, to be registered/registered, under sections of The Immoral Traffic (Prevention) Act, 1956 and sections 373, 370A of the Indian Penal Code, must also be registered and investigated under sections 370 (Buying or disposing of any person as a slave/Trafficking of persons) and 372 (Selling minor for purposes of prostitution) of Indian Penal Code 1860;*
- b) *That the Hon'ble Court be pleased to issue writ of mandamus or a writ or order or direction in the nature of mandamus or any other appropriate writ or order or direction directing the Respondents and its Investigating Agencies to take all possible efforts in all cases registered under the Immoral Traffic (Prevention) Act, 1956 and sections 370A, 373 of Indian Penal Code to trace, arrest and prosecute recruiters, traffickers, transporters, spotters, sellers and harbourers for offence u/s 370, 372 and 373 of Indian Penal Code and abettor of the offence, whether named or not in statements u/s 161 of Criminal Procedure Code by victims;*

- c) *That the Hon'ble Court be pleased to issue writ of mandamus or a writ or order or direction in the nature of mandamus or any other appropriate writ or order or direction directing Respondents to form of Anti-Human Trafficking Unit in each and every district and further direct that investigation of all the cases of Human Trafficking for sexual exploitation be conducted by Anti-Human Trafficking Unit;*
- d) *That Hon'ble Court be pleased to issue writ of mandamus or a writ or order or direction in the nature of mandamus or any other appropriate writ or order or direction directing Respondents to take steps for entering into Memorandum of Understanding with other States and Union Territories for co-operation in investigation and prosecution of interstate human trafficking cases;*
- e) *That the Hon'ble Court be pleased to issue writ of mandamus or a writ or order or direction in the nature of mandamus or any other appropriate writ or order or direction directing Respondent Union of India to appoint Special Investigating Officers u/s 13(4) of Immoral Traffic (Prevention) Act, 1956 in all districts in State of Maharashtra with further directions to Local Police and AHTUs of concerned district to render all assistance to the Special Investigating Officers so appointed by Union of India in Investigation and Prosecution of Inter-state Human Trafficking cases;*

3. From the averments made in the PIL petition, what we find is that serious concerns have been shown about not so happy a situation where the offenders under the 1956 Act as also under various penal provisions contained in Indian Penal Code (hereinafter referred to as "IPC"), such as Sections 370 and 370A escape the rigours of law. The allegations in the PIL petition, *inter alia*, are that the Special Police Officers and the advisory bodies as contemplated in Section 13(1) and 13(3)(b) of the Act of 1956 have either not been appointed in all the areas of the State or if they have been appointed, they are not discharging their functions appropriately sofaras prevention and investigation of the offences under the Act of 1956 are concerned.

4. Another allegation in the PIL petition is that in terms of Section 13(4) of the Act of 1956, Central Government has not appointed the Investigating Officers {Trafficking Police Officers as defined in Section 2(j) of the Act of 1956.}

5. An affidavit has been filed on behalf of the Union of India, according to which the offences under Sections 370 and 370A of the IPC have been included in the Schedule appended to National Investigation Agency Act, 2008 (hereinafter referred to as "NIA Act") and such offences being scheduled offences, are now being investigated by the NIA. The affidavit further states that inclusion of Sections 370 and 370A of the IPC in the Schedule appended to the NIA Act was made considering the situation which arises generally in case offences relating to human trafficking have inter-state or international connotation. However, sofaras the offences under the Act of 1956 as defined in Sections 3, 4, 5, 6, 7, 8

and 9 are concerned, the affidavit filed by the Union of India is silent.

6. If we peruse the scheme of the Act of 1956, we find that Sub-section (4) of Section 13 clearly provides that for the purposes of investigating any offence under the said Act dealing with sexual exploitation of persons, which are allegedly committed in more than one State, the Central Government will appoint such number of police officers as trafficking police officers as may be required and that such trafficking police officers shall exercise all the powers and discharge all the functions as are exercisable by the special police officers appointed under Section 13(4) of the Act. So far as, the offences under Sections 370 and 370A are concerned, as observed above, their inclusion in the Schedule appended to NIA Act empowers the National Investigating Agency to probe such offences and bring the offenders to book, however, in absence of appointment of trafficking police officers as per the requirement of Sub-section (4) of Section 13 of the Act of 1956, the offences under the said Act reported to have been committed in more than one State will remain uninvestigated and hence there appears to be an urgent need for appointment of the trafficking police officers under Section 13(4) of the Act of 1956.

7. Another issue raised in the PIL petition is in relation to setting up of the advisory bodies in terms of the requirement of Section 13(3)(b) of the Act of 1956 which clearly states that the State Government shall associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area,

which shall include women social welfare workers wherever practicable. The purpose of setting up of the advisory body is to advise the special police officer on questions of general importance regarding the working of the Act. Setting up of the advisory body under Section 13(3)(b) has a salutary purpose as the offences under the Act of 1956 have a different connotation than the offences committed under the IPC or any other enactment. The offences under the Act of 1956 have social and cultural ramifications as well and accordingly the Central Legislation has provided for setting up of the advisory body to advise the special police officers who are otherwise entrusted to investigate offences under the Act of 1956.

8. Apart from the issues as identified above, the PIL petition also raises an issue of creation of Anti-Human Trafficking Units. The affidavit filed by the Union of India mentions that certain funds have been released by the Central Government for setting up of Anti-Human Trafficking Units in certain districts of the States and also for setting up Women Help Desks in police stations in all the States, including State of Maharashtra.

9. As to whether the advisory bodies contemplated in Section 13(3)(b) of the Act of 1956 have been constituted and as to whether the Anti-Human Trafficking Units in certain districts in the State of Maharashtra as also Women Help Desks in the police stations in the State have been set up and if these bodies have been set up, whether they are functioning and discharging their duties in terms of the statutory requirement are the issues on which the State Government needs to reflect upon.

10. In view of the aforesaid, we direct the State of Maharashtra in the Home Department to file a comprehensive affidavit giving afore-mentioned details and also stating therein specifically the work and functions being performed by the Anti-Human Trafficking Units and the Women Help Desks. While filing the affidavit, the State Government shall also indicate as to how many offences reported under Sections 370 and 370A of the IPC in the State of Maharashtra have been referred for investigation to the National Investigating Agency under the NIA Act.

11. We also call upon the Union of India to file a fresh affidavit giving details of the steps taken by it for ensuring appointment of trafficking police officers in terms of Section 13(4) of the Act of 1956.

12. The aforesaid affidavits shall be filed within four weeks. Rejoinder to the said affidavits, if any, may be filed by the petitioners within a week thereafter.

13. Stand over to **4th December, 2023 (High on Board)**.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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DASHARATH
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