

**IN THE COURT OF I ADDITIONAL SESSIONS JUDGE, THRISSUR**

**Present:**

**Sri. K. KAMANEEES., Additional Sessions Judge-I**

**Session Case No.719/2022**

**Order**

This is a case chargesheeted by the Sub Inspector of Police, Railway Police Station against the accused person alleging offences under Sections 370(1),(2), (5) r/w Section 34 of IPC.

2. The case of the prosecution is that the accused No.1 to 3, in furtherance of their common intention, by way of exploiting the minors CW3, 4 and 5 (all girls) and as instigated by the accused No.4 and 5, all accused persons knowing their common design to traffick girls who belonged Jharkhand bring to Kerala for the purpose of working in different convents as house maids, transported them in train No.03351 for such purpose. While so, they were intercepted by the Child Line team member, CW1 and other witnesses in the platform No.1 of Thrissur Railway station while they were on duty. Therefore, the offences alleged under Sections 370(1),(2), (5) r/w Section 34 of IPC.

3. All the accused persons entered appearance here. Among them, accused No.1 to 3 belong to the the State of Jharkhand and accused No.4 and 5 are the office bearers of

the respective congregations (Mother Superiors of St. Joseph Convent, Ambakad and Fathima Convent, Poomala).

4. All the accused persons appeared on summons. All of them are on bail. The allegation against them is that of committing offence under sections 370(1)(2)(5) r/w Section 34 of IPC.

5. The learned Prosecutor addressed the court generally with respect to the materials he places reliance on to have a prima facie satisfaction as to commission of the crime. The counsels argued that no such offence has been made out as alleged by the prosecution even if the entire prosecution records are taken as proved.

6. Their grounds have been heard in detail.

### **Point**

7. The following points arise for consideration:-

1. Whether there are sufficient grounds as to existence of a prima facie finding as to commission of the offence by the accused persons?
2. Whether there is at least materials to interfere a grave suspicion as to existence of the facts constituting the offence alleged?
3. If so, what offence is made out and what sentence to be passed?

### **The case law**

8. While considering the scope of discharge, in **Sajjan Kumar v. Central Bureau of Investigation** MANU/SC/0741/2010 : 2010:INSC:624 : (2010) 9 SCC 368; the Hon'ble Apex Court laid down certain guiding principles for discharge as under:

*“... On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

*(i) The Judge while considering the question of framing the charges Under Section 227 Code of Criminal Procedure has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the Accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*

*(ii) Where the materials placed before the court disclose grave suspicion against the Accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*

*(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at*

*this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

*(iv) If on the basis of the 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.*

*(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the Accused was possible.*

*(vi) At the stage of Sections 227 and 228, 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 existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

*(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the Accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.*

9. This view has been followed of late in **Karan Talwar vs. The State of Tamil Nadu MANU/SC/1372/2024** by the apex court and the law has been reiterated as follows.

*7. The position of law enunciated in the said decisions would reveal that while calling upon to exercise the power Under Section 227, Code of Criminal Procedure, the judge concerned has to consider only the record of the case and the documents produced along with the same. If on such consideration the court forms an opinion that there is no sufficient ground to proceed against the Accused concerned, he shall be discharged after recording the reasons therefor. It is also evident from the precedence on the aforesaid question that while exercising the said power, the Court could sift the materials produced along with the final report only for the purpose of considering the question whether there is ground to proceed against the Accused concerned.”*

10. Therefore, this court does not intend to swift and weigh the materials produced in the touchstone of admissibility of evidence or creditworthiness of the witnesses who rather the court shall look into the materials produced with the final report for the purpose of considering whether there is ground to proceed.

11. Going by the evidence that is produced in the final report, the same is one more or less based on oral evidence. The lady who had lodged the F.I statement is Smt.Sini Shibu who was the de facto complainant who prepared the report and presented it to the CW18 who registered the FIR. He had inspected the Aadhar card and train tickets of the victim girls. In her statement she mentions she saw three girls alighting in Thrissur Railway station in the Dhanbad Alleppey express and certain sisters from the convents were also seen there. The lady approached the girls and obtained their address. The lady intercepted and informed the matter to the Child Welfare Committee and lodged information in the police station. She came to understand that the girls were brought upon promise of domestic helper jobs. Nitha Justin is another witness who assists the Child Line Officer. She was working as a counselor in the help dusk duty. She also interrogated the girls. The girls were interrogated with the help of translators who knew their language spoken when interrogated with the help of Smt. Sruthi Menon, another witness cited. The girls have given the versions to the CPO Noorjahan (cited as a witness). All of them had been for the first time in Kerala.

The accused 1 and 2 had been working in Kerala for a long time and they informed their respective parents that the girls could be taken to Kerala so that they could do domestic helper jobs in the convents of Kerala. There was an offer for a good salary. The CW3, survivor had been instrumental in informing the matter to other survivors, and all of them were prepared to go to Kerala in search of good job opportunities. One lady was also there. She was also ready to come. The accused 3 had also come along with the accused 1 and 2 (whom the girls called Chacha). The 3rd accused had arranged the jobs for the girls in Thrissur. They went to Hattiya Railway station first and then caught the Dhanbad express. They have given descriptions also of their very poor social as well as economic conditions, probably imperceivable in the state of Kerala.

12. All these girls were lodged in Snehitha Gender Help Desk. Smt.Sruthi Menon, the translator knows many languages and she is a volunteer in recording the statements.

13. The girls were subsequently taken to the court of Additional Chief Judicial Magistrate, Thrissur. They were produced before the medical board for the assessment of age by the board. The victims 1 and 2 were detected to be aged between 17 and 18 years, and the other survivor between 15 and 16 years.

14. The parents of the girls were also examined by the police. The parents also repeat what has been stated by the survivors. The parents are Satrugnan Singh, Khaleshwar

Oraon and Lalithadevi. One of their relatives who work in Kerala by name Durgavathi( cited as witness), accompanied them back and also acted as translator. The rest are official witnesses.

15. The above mentioned being the evidence that is tendered, the following conclusion shall be possible, even while the evidence tendered is taken at face value.

1. That, there had not been any misinformation or disinformation from the side of any of the accused persons.
2. That, the girls were taken from their respective villages with the consent of their parents and as intended by the respective girls.
3. That, there had not been any instance of exploitation, sexual or otherwise, and not even an instance of bondage by any of the witnesses nor does the prosecution has such a case..
4. That, there has not been any duress or coercion or intimidation or assault originated from any of the accused persons - nor does the prosecution has such a case.
5. That, it was only a passage of the minor girls, of course as accompanied by the accused persons who are known to them and with the consent of their parents and themselves.



6. That, the girls had been in search of a better living and there is not even an allegation that any forced labour has been there.

16. Obviously, no offence under section 26 of the JJ Act is made out as held in **Prakash v. State of Kerala 2022 (6) KLT 218.**

*“The final report is silent about the necessary ingredients required for attracting the offence. There is no whisper about any hazardous employment or an allegation on keeping the juvenile in bondage or even about the withholding of earnings. Hazardous employment is different from hard work. The allegation in the final report is that the juvenile was employed for ‘hard work’. There are no allegations that he was employed for any hazardous employment or that he was kept in bondage. In such circumstances, even the offence alleged under section 26 of the JJ Act is not made out.”*

17. In this case also the girls were travelling for the purpose of acting as housemaids and on an assurance as to payment of salary and other benefits attached.

18. The offence under section 370(1) IPC goes as follows.

*370-Trafficking of a Person.—*

*(1)Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—*

*First.— using threats, or*

*Secondly.— using force, or any other form of coercion, or*

*Thirdly.— by abduction, or*

*Fourthly.— by practising fraud, or deception, or*

*Fifthly.— by abuse of power, or*

*Sixthly.— by inducement, including the giving or receiving of payments or benefits,*

*in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.*

*Explanation 1.— The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.*

*Explanation 2.— The consent of the victim is immaterial in determination of the offence of trafficking.*

19. There is absolutely no recital that the girls had been transported using any threats. There is no case of committing any abduction or playing fraud/deception or by abuse or power. The main allegation is that there has been some form of coercion and that of inducement. It has to be seen that none of the witnesses including the survivors state so. The survivors state that no amount had been received. There is not even an averment to the effect that any attempt similar to slavery or servitude has even been committed.

20. In other words, the prosecution is not at all successful in proving a prima facie case against the accused persons. Going by the second point of grave suspicion also, the prosecution fails to prove the same.

21. It follows that all of the accused persons shall have to be discharged of the offences. The points are found in favour of the accused and against the prosecution.

In the result, the accused persons are discharged of the offences under section 370(1) and (5) IPC, under section 227 Cr.P.C. Their bail bonds are cancelled and they are set at liberty.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court this the 26th day of July, 2025).

**K. KAMANEEES**

**I ADDL. SESSIONS JUDGE**

**THRISSUR.**