



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 17299 OF 2025

BETWEEN

R

...PETITIONER

(BY SRI GIREESHA R. J., ADVOCATE)

AND:

STATE BY
ELECTRONIC CITY POLICE STATION
BENGALURU - 560 058.
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...RESPONDENT

(BY SRI B.N.JAGADEESHA, ADDL. SPP)

THIS CRL.P IS FILED U/S 482 CR.P.C., (FILED U/S 528 BNSS) PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 15.11.2025 PASSED IN CR.NO.395/2025 ON I.A. U/S 17(2) OF THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956 BY ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-II, BENGALURU RURAL DISTRICT, BENGALURU PRODUCED AT ANNEXURE-A AND CONSEQUENTLY ALLOW THE





APPLICATION FILED THE PETITIONER I.A. U/S. 17(2) OF THE IMMORAL TRAFFIC (PREVENTION) ACT 1956.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner – mother of the victim girl is before this Court calling in question an order dated 15.11.2025, passed by the Additional District and Sessions Judge, FTSC-II, Bengaluru Rural District, whereby, an interlocutory application filed by the petitioner under Section 17(2) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to 'the Act' for short), seeking custody of her daughter in Crime No.395/2025, comes to be rejected.

2. Heard Sri Gireesha R.J., learned counsel for petitioner and Sri B.N.Jagadeesha, learned Additional State Public Prosecutor for the respondent.

3. The petitioner is said to be the mother of the victim child, who was rescued from a lodge, which was running a prostitution racket. The State then keeps the victim girl in



the Child Welfare Home. The petitioner - mother of the victim files an application before the concerned Court under Section 17(2) of the Act, seeking custody of her daughter on the score that her daughter has now attained 18 years of age. Once the minor girl attains the age of 18, the daughter cannot be kept in the Child Welfare Home and she the daughter has to be handed over to the parents, one of whom is the petitioner, the mother of the victim. The concerned Court after rendering detailed reasons, rejected the said application on the score that the daughter was forced to prostitution by the petitioner – mother. This order of rejection is what is challenged before this Court in the subject petition.

4. Learned counsel appearing for the petitioner would submit that Section 17(2) of the Act can be pressed into service only when the victim girl attains the age of 18 years and she cannot be kept in the Child Welfare Home or under the custody of the State. Once the victim attains the age of 18 years, the mother is entitled to the said custody.



5. Learned Additional State Public Prosecutor takes this Court through the entire material that lead to a raid in the lodge and registration of a crime in Crime No.395/2025. The police after investigation filed a charge sheet against several persons. Learned Additional State Public Prosecutor submits that the petitioner - mother ought to have been booked for forcing her daughter for prostitution, which has not been done. It is an inadvertent omission. Learned Additional State Public Prosecutor would further contend that when an earlier crime had been registered against the petitioner – mother for the very offences under the Act and the application being filed by the petitioner mother, the child was released in favour of the mother. But, the mother again puts her daughter back into the same situation *i.e.*, into the racket of prostitution, which has now become a crime in Crime No.395/2025. Be that as it may.

6. The issue now is, whether the victim – daughter of the petitioner who was rescued from a prostitution racket and at the relevant point in time was aged 17 years, should



be handed over to the custody of the mother, on the score that she has now attained the age of 18 years.

7. To answer the issue, it is necessary to notice Section 17 and Section 17A of the Act. It reads as follows:

"17. Intermediate custody of persons removed under Section 15 or rescued under Section 16.—

(1) When the special police officer removing a person under sub-section (4) of Section 15 or a police officer rescuing a person under sub-section (1) of Section 16, is for any reason unable to produce him before the appropriate magistrate as required by sub-section (5) of Section 15, or before the magistrate issuing the order under sub-section (2) of Section 16, he shall forthwith produce him before the nearest magistrate of any class, who shall pass such orders as he deems proper for his safe custody until he is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order:

Provided that no person shall be—

- (i) detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or
- (ii) restored to or placed in the custody of a person who may exercise a harmful influence over him.

(2) When the person is produced before the appropriate magistrate under sub-section (5) of Section 15 or the magistrate under sub-section (2) of Section 16, he shall, after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, he may direct a probation officer



appointed under the Probation of Offenders Act, 1958 (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

(3) The magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person:

Provided that where a person rescued under Section 16 is a child or minor, it shall be open to the magistrate to place such child or minor in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children:

Provided further that, no person shall be kept in custody for this purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over him.

(4) Where the magistrate is satisfied, after making an inquiry as required under sub-section (2),—

- (a) that the information received is correct; and
- (b) that he is in need of care and protection,

he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that those entrusted with the custody of the person including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.

(5) In discharging his functions under sub-section (2), a magistrate may summon a panel of five



respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.

(6) An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.

17A. Conditions to be observed before placing persons rescued under section 16 to parents or guardians.—Notwithstanding anything contained in sub-section (2) of section 17, the magistrate making an inquiry under section 17 may, before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.”

(Emphasis supplied)

Section 17(2) of the Act provides for an inquiry by the Magistrate, when the persons rescued under Sections 15 and 16 of the Act are produced before him. The Magistrate is required to enquire into the age, character and antecedents of such rescued person and the suitability of his parents, guardian or husband for taking custody of the rescued person. Section 17A of the Act provides for an inquiry by the Magistrate before passing an order for handing over the custody of the rescued person to their parents, husband or guardian.



8. The petitioner – mother, files an application seeking custody of her daughter on the score that she has now attained the age of 18 years. This comes to be rejected by the following order:

REASONS

8. **POINT NO.1:** The present case is registered against the accused No.1 and 2 for the offences punishable under Sections 3, 4, 5 of ITP Act and Section 143(2,3) of BNS. Subsequently Sections 4, 18, 8, 12, 17 of POCSO Act and Sections 64(1), 62, 75, 143(4) of BNS were inserted.

9. The applicant is seeking the custody of the minor victim girl under section 17(2) of ITP Act stating that she is the mother of the victim girl.

Section 17 of The Immoral Traffic (Prevention) Act, 1956 Intermediate custody of girls removed under section 15 or rescued under section 16.

(1) When the special police officer removing a girl under sub-section (4) of section 15 or rescuing a girl under sub-section (1) of section 16, fails to produce her immediately before the magistrate as required by sub-section (5) of section 15 or sub-section (2) of section 16, he shall forthwith produce her before the nearest magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate magistrate.

(2) When the girl is produced before the appropriate magistrate he shall, after giving the girl an opportunity of being heard, cause an enquiry to be made as to the correctness of the information received under sub-section (1) of section 16 and the age of the girl and, if satisfied that the information received is correct and the girl is under the age of



twenty-one years, he may, subject to the provisions of the next sub-section, make an order that such girl be detained for such period as may be specified in the order, in a protective home or such other custody as he, for reasons to be recorded in writing, shall consider suitable: Provided that such custody shall not be that of a person, or body of persons, of a religious persuasion different from that of the girl.

(3) In discharging his functions under sub-section (2), a magistrate may summon a panel of five respectable persons, three of whom shall wherever practicable be women, to assist him; and may for this purpose keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in women and girls.

(4) Against every order under sub-section (2) an appeal shall lie to the Sessions Judge whose decision on such appeal shall be final.

10. In this case the applicant is said to be the mother of the victim girl. The applicant has produced copies of photographs, notarized copies of rental agreement, Adhar Cards, Identity Cards of the victim girl and school certificates of the victim girl. One of the school certificates shows name of the mother as Doly.

11. Apart from that, report of the investigating officer shows that earlier also the victim girl was caught in another case of Beguru police station registered in Cr.No.332/2024. Thereafter the victim girl was released to the custody of her mother. The present applicant is said to be the mother as per the report of the investigating officer. However, in this case the victim girl is not produced before this court. When the victim girl is not produced before this court as provided under the provisions of ITP Act, the applicant is not entitled for the custody of the victim girl. Therefore, I answer point No.1 in the Negative.



12. **POINT NO.2:** In view of my findings on the point No. 1, I proceed to pass the following:

ORDER

The application filed by the applicant under Section 17(2) of the Immoral Traffic (Prevention) Act 1956 is rejected."

(Emphasis added)

To consider whether the child could be released or not, it is necessary to go back to the reason for registration of the crime. The crime comes to be registered in Crime No.395/2025 for offences punishable under Sections 3, 4 and 5 of the Act and Sections 4, 18, 8, 12, 17 of the Protection of Children from Sexual Offences Act, 2012. Subsequently, Sections 4, 18, 8, 12, 17 of POCSO Act and Sections 64(1), 62, 75, 143(4) of the BNS were added. The police conduct investigation and file a charge sheet. The summary of the charge sheet reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ವಿವರ (ಅವಶ್ಯವಿದ್ದಲ್ಲಿ ಪ್ರತ್ಯೇಕ ಹಾಳೆ ಲಗತ್ತಿಸಿ) Brief Facts of the case (Add separate sheet if necessary)

ದಿನಾಂಕ:27-10-2025 ರ ಸಂಜೆ 07:00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಎಲೆಕ್ಟ್ರಾನಿಕ್ ಸಿಟಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿಗೆ ಸೇರಿದ ವಾಸ: ನಂ.24, 2ನೇ ಮಹಡಿ, ಬಿಲ್ಡಿಂಗ್ ನಂ.134/1, 3ನೇ ಕ್ರಾಸ್, ಚಿಕ್ಕತೋಗೂರು ಮುಖ್ಯರಸ್ತೆ, ಗೋವಿಂದಪ್ಪ ಕಾಲೋನಿ, ಪ್ರಗತಿನಗರ, ಬೆಂಗಳೂರು ರಲ್ಲಿ ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿ ಕ್ರ.ಸಂ.12 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಎ-1 ಆರೋಪಿತ ವಾಸಕ್ಕೆಂದು ಬಾಡಿಗೆಗೆ ಪಡೆದುಕೊಂಡು ತನ್ನ ಸ್ವಂತ



ಲಾಭಕ್ಕಾಗಿ, ಬಡತನದಲ್ಲಿರುವ ಅನ್ಯ ರಾಜ್ಯದ ಮಹಿಳೆಯರಿಗೆ ಬೆಂಗಳೂರಿನಲ್ಲಿ ಹೆಚ್ಚಿನ ಹಣ ಬರುವ ಉತ್ತಮ ಉದ್ಯೋಗವನ್ನು ಕೊಡಿಸುತ್ತೇನೆಂದು ನಂಬಿಸಿ ಅವರನ್ನು ಅಕ್ರಮ ಮಾನವ ಕಳ್ಳಸಾಗಾಣಿಕೆ ಮಾಡಿ ಬೆಂಗಳೂರಿನ ಮೇಲ್ಕಂಡ ಮನೆಯಲ್ಲಿ ಕರೆತಂದು ಇರಿಸಿ ಅವರಿಗೆ ಹಣದ ಆಮಿಷ ತೋರಿಸಿ ಅವರನ್ನು ವೇಶ್ಯಾವಾಟಿಕೆ ನೇಮಿಸಿಕೊಂಡು ಅನ್‌ಲೈನ್‌ನಲ್ಲಿ ಹಣವನ್ನು ಪಡೆಯುತ್ತಿದ್ದ ಬಗ್ಗೆ ಬಾತ್ಮಿದಾರರಿಂದ ಖಚಿತ ಮಾಹಿತಿ ಬಂದ ಮೇರೆಗೆ ಸಾಕ್ಷಿ-21 ರವರು ಪ್ರಕರಣ ದಾಖಲಿಸಿ ಸಾಕ್ಷಿ-22 ರವರಿಗೆ ನೀಡಿದ್ದು, ಸಾಕ್ಷಿ-22 ರವರು ಸಾಕ್ಷಿ-17 ರಿಂದ 20 ರವರೊಂದಿಗೆ ಸಾಕ್ಷಿ-3 ಮತ್ತು ಸಾಕ್ಷಿ-4 ರವರ ಸಮಕ್ಷಮದಲ್ಲಿ ಧಾಳಿ ಮಾಡಿ ಸಾಕ್ಷಿ-2 ರವರನ್ನು ರಕ್ಷಿಸಿದ್ದು, ಎ-2 ಆರೋಪಿಯನ್ನು ವಶಕ್ಕೆ ಪಡೆದಿದ್ದು, ಸದರಿ ಸಾಕ್ಷಿ-2 ರವರನ್ನು ಸಾಕ್ಷಿ-8 ಮತ್ತು 9 ರವರ ಸಮಕ್ಷಮದಲ್ಲಿ ವಿಚಾರಣೆ ಮಾಡಿ ದಾಖಲೆಗಳನ್ನು ಪಡೆಯಲಾಗಿ ಸಾಕ್ಷಿ-2 ರವರು ಅಪ್ರಾಪ್ತ ಬಾಲಕಿ ಎಂದು ತಿಳಿದುಬಂದಿದ್ದು, ಎ-1 ಆರೋಪಿತೆ ಸಾಕ್ಷಿ-2 ರವರನ್ನು ಎ-2 ಆರೋಪಿಗೆ ಮೆಹಂದಿ ಹಾಕುವ ಕೆಲಸದ ನೆಪದಲ್ಲಿ ಕರೆಮಿಸಿಕೊಂಡು ಮನೆಯಲ್ಲಿ ಎ-2 ಆರೋಪಿತೆಯೊಂದಿಗೆ ವ್ಯವಹಾರ ಕುದುರಿಸಿಕೊಂಡು 1100/-ರೂಗಳ ಹಣವನ ಆನ್‌ಲೈನ್ ಮುಖಾಂತರ ಪಡೆದು, ಎ-2 ಆರೋಪಿಯನ್ನು ಅಪ್ರಾಪ್ತ ಬಾಲಕಿಯಾದ ಸಾಕ್ಷಿ-2 ರವರೊಂದಿಗೆ ವೇಶ್ಯಾವಾಟಿಕೆ ತೊಡಗಿಸಿದ್ದು, ಎ-2 ಆರೋಪಿ ಸಾಕ್ಷಿ-2 ರವರೊಂದಿಗೆ ಸೆಕ್ಸ್ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಎ-1 ಆರೋಪಿತೆಯ ವಿರುದ್ಧ ಕಲಂ 17 ಪೊಕ್ಸೋ ಆಕ್ಟ್-2012 ಮತ್ತು ಕಲಂ 143(4) ಬಿಎನ್‌ಎಸ್-2023 ಹಾಗೂ 3, 4, 5 ಐ.ಟಿ.ಪಿ ಆಕ್ಟ್-1956 ಅಡಿಯಲ್ಲಿ ಹಾಗೂ ಎ-2 ಆರೋಪಿ ಕಲಂ 4, 18, 8, 12, 17 ಪೊಕ್ಸೋ ಆಕ್ಟ್-2012 ಮತ್ತು ಕಲಂ 64(1), 62, 75 ಬಿಎನ್‌ಎಸ್-2023 ಅಡಿಯಲ್ಲಿ ಆರೋಪ ಹೊರಿಸಿ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯನ್ನು ತಯಾರಿಸಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನಿವೇದಿಸಿಕೊಂಡಿರುತ್ತದೆ.

ನಿವೇದನೆ:-

ಈ ಪ್ರಕರಣದಲ್ಲಿ ನೊಂದ ಬಾಲಕಿಯ ಎಫ್.ಎಸ್.ಎಲ್ ವರದಿ ಹಾಗೂ ವೈದ್ಯರ ಅಂತಿಮ ಅಭಿಪ್ರಾಯ ವರದಿ ಹಾಗೂ ಎ-1 ಆರೋಪಿತೆ ಕೃತ್ಯಕ್ಕೆ ಬಳಸಿದ ಮೊಬೈಲ್‌ಫೋನ್ ಪತ್ತೆಮಾಡಬೇಕಾಗಿದ್ದು, ಇತರ ದಾಖಲೆಗಳು ಸಂಗ್ರಹಿಸಿ ಕಲಂ 193 (8) 'ಬಿಎನ್‌ಎಸ್‌ಎಸ್ ಅಡಿಯಲ್ಲಿ ನಿವೇದಿಸಲಾಗುವುದು."

The issue in the *lis* does not concern the merit of the crime or the charge sheet so filed by the State. The statement of the victim and the statement of others would



prima facie indicate that the mother had forced the daughter to prostitution.

9. Learned Additional State Public Prosecutor is right in contending that when a child is rescued from a prostitution racket and is in the custody of the State or the Child Welfare Home, but when there are allegations against the mother that she is indulging in the act of using her daughter for the purpose of prostitution, the girl should not be handed over to the custody of the mother.

10. It is un-understandable as to how the mother is left while filing the charge sheet, notwithstanding the fact that there is a lurking suspicion that she has indulged in forcing her daughter for prostitution *albeit, prima facie*, and how could the mother be left off while filing the charge sheet.

11. It now becomes apposite to refer to the interpretation of law on this issue. The High Court of Delhi, in the case of **DELHI HIGH COURT LEGAL SERVICES**



COMMITTEE v. UNION OF INDIA¹, while referring to an earlier judgment of the Division Bench of the High Court of Bombay in **PRERANA v. STATE OF MAHARASHTRA**², observes as follows:

“... ..

73. It is also noteworthy, that by a statutory amendment with effect from 26th January, 1987, the following section 17A of the IT Act of 1956 was inserted : -

“17A. Conditions to be observed before placing persons rescued under section 16 to parents or guardians - Notwithstanding anything contained in sub-section (2) of section 17, the magistrate making an inquiry under section 17 may, before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.

I now propose to examine the issues raised in the present proceedings.

If persons recovered by the police in a raid under Sections 15 or 16 of the IT Act, 1956 are under 18 years of age, are they to be dealt with under the IT Act, 1956 or in accordance with the JJ Act, 2000?

In order to find answers to the questions arising in the present case, we may firstly consider the principles of statutory interpretation which would guide the present adjudication.

¹2014 SCC OnLine Del 4101

² **2002 SCC OnLine Bom 984**



IT Act being a penal statute needs to be strictly construed

74. It has been submitted that the IT Act, 1956 is a penal statute which deals with all persons whereas the JJ Act, 2000 is a specific enactment for persons under 18 years of age.

75. Penal statutes are those which provide for penalties for disobedience of the law and are directed against the offender by making him liable to imprisonment, fine, forfeiture or other penalty. If the statute enforces obedience to the command of the law by punishing the offender and not by the offender merely redressing an individual who may have suffered, it will be classified as penal. The IT Act largely defines offences and stipulates punishments for their commission. It is clearly a penal statute.

....

Thus, it is very clear that the IT Act being a penal statute has to be strictly construed.

....

98. The Indian experience showed that the differential laws enacted by the different States were not furthering the welfare of the children resulting in the relook direction by the Supreme Court in *Sheela Barse's* case (supra) for a parliamentary legislation. International standards prescribed making of such laws as well as institutions and bodies entrusted with the functions of administration of juvenile justice designed to meet the special needs of the juveniles as well as protection of their rights, i.e., a clear recognition of the principle that a child has to be dealt with differently than the adult. **The need to provide for special measures qua children deprived of the basics of their physical and emotional needs, including creation of authorities devoted to their cause, was also recognized. It was essential to bring**



children's law in conformity with international instruments.

99.The JJ Act came into existence with the object of addressing the above concerns for a very special class of persons that is those under eighteen years of age. It draws a distinction between children in conflict with law and those in need of care and protection provides special treatment for them, mandates a special inquiries. The constitution of the JJB as well as the CWC is of persons with expertise and training in child welfare related areas. Even the Magistrate concerned is required to be one with expertise in the psychology of children.

100. On the other hand, the IT Act is a more general prior enactment and is concerned with all persons irrespective of ages, involved in immoral trafficking or prostitution.

.... ..

104.A non-obstante clause is also found in Section 17A of the IT Act, 1956 which stipulates that notwithstanding anything contained in sub-section (2) of Section 17, the magistrate making an enquiry under Section 17 may satisfy himself about the capacity or genuineness of parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.

.... ..

123.The above narration also supports only conclusion that the JJ Act has been enacted by the legislature giving primacy to the welfare of children and has to be given primacy in matters relating to them irrespective of the concerns of other legislations.

124. It is noteworthy that so far as Section 17 of the IT Act, 1956 is concerned, the same is applicable to a consideration on the matter of



intermediate custody of persons removed under Section 15 or rescued under Section 16 alone. Interestingly, no similar provisions have been made with regard to persons who would be covered under Section 7 of the IT Act of 1956.

125. **Section 17A of the IT Act was incorporated into the statute by way of an amendment by Act 44 of 1986 w.e.f. 26th January, 1987. So far as the provisions of Section 17A are concerned, it is also confined to conditions which are required to be observed before placing a person rescued under Section 16 with parents or guardians. The magistrate is required to satisfy himself about the capacity or genuineness of the parents, guardians or husband to keep such person by causing an investigation to be made by recognised welfare institution or organisation.**

126. **The legislature in its wisdom did not consider the existing provisions of the IT Act, 1956 as sufficient provisions looking to the benefit of the children, having regard to the enquiry postulated under and the scheme of the Juvenile Justice Act of 1986 which was passed on the 1st of December, 1986.**

127. So far as juveniles in conflict with law or children in need of care and protection are concerned, they cannot under any circumstances, be equated with or treated in the manner in which adult persons are treated. This statutory scheme is provided under sub-section (4) of section 1 of the Juvenile Act, 2000 which states as follows : -

“Section 1(4)- **Notwithstanding anything contained in any other law for the time being in force, the** provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.

128. **So far as the children rescued from brothels are concerned, special statutory provisions have been made under the JJ Act of 2000.** There is therefore, substance in the submissions



of Mr. Madhukar, learned counsel for the petitioner that the intent of the statute, to protect the human rights of the child is to be given primacy, and its provisions have to be strictly followed.

129. Such reading of the two statutes would prevent conflict in the statutory provisions as well as absurdity. Certainly the legal dynamics of social justice as well as the clear legislative intendment guides this court in holding that so far as a matter involving a juvenile in conflict with law or/and children in need of care and protection are concerned, the statutory intent is clear and has to be given full effect. **The words of the statute given their plain and literal meaning, leave no manner of doubt that so far as a child is concerned, the JJ Act of 2000 has primacy.** No court or authority has any option in the matter and the provisions of the Juvenile Justice Act, 2000 have to be strictly applied.

130. The rights of the juvenile and children having been placed on such a high pedestal by the legislature, and so it has to be held that the procedure prescribed under the Juvenile Justice Act, 2000 governs all cases concerning juveniles in conflict with law irrespective of the offence they are alleged to have committed as well as all children covered under the definition of children in need of care and protection. Every aspect of the matter including detention, prosecution, sentencing, rehabilitation, restoration of a person who has not completed eighteen years of age under Section 18 has to be dealt with in accordance with provisions of the Juvenile Justice Act.

131. The two legislations under construction address specific concerns and areas, the JJ Act being restricted in its application to a specific class of persons. In case the IT Act of 1956 is allowed to prevail, it will lead to such construction as was not so intended by the legislature. Both the special enactments are required to be allowed to operate in entirety just as any other self contained code. The construction of the legislations has to be harmonious/in



tune so as to ensure that the special features and purpose of both the enactments can remain intact and in the best interest of children as well as for the benefit of the society. If an enactment meant to apply to all age groups is allowed to override the special enactment meant for children, it will ultimately result and reduce such statute (i.e. the special enactment for children) to a state of futility.

132. Going by the above principles, the JJ Act deals specifically with person below 18 years of age whereas the IT Act deals with persons of all ages; also the JJ Act being a subsequent or later enactment and the IT Act being an earlier enactment and both containing non-obstante clauses, the non-obstante clause in the JJ Act would ordinarily prevail over the non-obstante clause in the IT Act.

133. Thus, in the context of persons covered under the definition of 'child' under the JJ Act, it is the special enactment vis-a-vis the IT Act.)

134. The matter, however, does not end here. There is another important issue which requires to be addressed. We are confronted with a situation where a person under eighteen years of age has been recovered by the police in action taken under Section 15 and Section 16 of the IT Act of 1956. The question which has been raised is whether such person is guilty of commission of offences under provisions of the IT Act and therefore to be dealt with as a juvenile in conflict with law under the JJ Act or such person is to be treat as a child in need of care and protection.

.... ..

169. An issue similar to that before us arose for consideration before the Bombay High Court in the judgment reported at 2002 AIIMR (Cri.) 2400 entitled *Prerna v. State of Maharashtra* (Cri. W.P. No. 788/2002 decided on 7th October, 2002 with regard to custody of girls rescued who were under the age of 18 years. A challenge had been laid before the Division Bench with regard to an



order passed by the Juvenile Justice Board for releasing the rescued girls. It had been argued that it was obligatory on the part of the Juvenile Justice Board to record a finding that they were not minors but were adult females before making the order releasing them.

170. The contentions on behalf of the rescued persons before the Bombay High Court, with regard to the manner in which they are to be treated, have been detailed in para 14 of the judgment which may be usefully adverted to and extracted in extenso, which reads as follows : -

"14. Ms. Adenwalla urged that some of the rescued girls being under 18 years of age are victims and cannot be treated as accused. Under section 8 of the PITA soliciting in a public place is an offence. The same provision cannot be applied to juveniles. The learned counsel urged that the law does not permit a girl under 18 years of age to consent to sexual intercourse. Hence a child cannot be charged for soliciting as in the eyes of law, her consent has been vitiated. She also drew our attention to certain provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 ("The JJA" for short). She submitted that the said Act aims at providing proper care, protection and treatment of children under 18 years of age. 'Juvenile' or child is defined under the JJ Act as a child who has not completed 18 years of age. A child who is said to have committed an offence is described as a juvenile in conflict with law and destitute children who are likely to be grossly abused or tortured or who are mentally or physically challenged, are described as children in need of care and protection. She submitted that a juvenile in conflict with law has to be produced before Juvenile Justice Board and a child in need of care and protection has to be produced before the child welfare committee. Thus, the JJA deals with two types of children, juveniles in conflict with law and children in need of care and protection. A juvenile girl found soliciting can be categorised both as a



juvenile in conflict with law under section 2(1) as well as child in need of care and protection under section 2(d)(vi). The learned counsel contended that considering the fact that the girls under 18 years of age are victims of circumstances and are forcibly brought into flesh traffic by traffickers, who may include their family, relatives and friends, such girls cannot be treated as accused. They would more appropriately fall in the category of children in need of care and protection under section 2(d)(vi). She submitted that it is, therefore, necessary that all such girls should be produced before the Child Welfare committee and not before the Juvenile Justice Board. This is because it is necessary to rehabilitate these girls rather than penalise them, for they are forced into these activities."

(Emphasis supplied)

171. The court had dwelt on the issue as to when a child would be dealt with as a juvenile in conflict with law, and whether a person rescued in such circumstances, is a child in need of care and protection. The observations of the Bench on this aspect are important and read as follows : -

"33. We express our displeasure at the manner in which this case has been handled by the Board. First of all if the girls were minors and they were not involved in any offence, they could not have even been described as juveniles in conflict with law. They were children in need of care and protection as per the provisions of the JJA. They ought to have been produced before the Child Welfare Committee once their minority was confirmed. Assuming they had to be produced before the Magistrate to seek orders for their production before the Child Welfare Committee and not before the Juvenile Justice Board because they were minors and not accused. Assuming further, that they could have been produced before the Juvenile Justice Board, there was no warrant for the board to release them because the record before the Board clearly indicated that the girls were minors. The



Board could have released them, without conditions, only if they were majors. Because they were minors, the Board was duty bound to follow the procedure prescribed under the JJA. The Board ought to have given due consideration to the request of the probation officer that they should not be released because she was awaiting information about them from the states from where they had come. This request was obviously made to explore the possibility of finding out their parents so that their custody could be entrusted to them with some conditions. Surprisingly the Board released them on a condition that they shall not enter into the local jurisdiction of social welfare branch.

34. We have referred to the relevant provisions of the JJA which make it evident that both, a juvenile in conflict with law or a child in need of care and protection have to be dealt with, keeping in mind the possibility of their reformation and rehabilitation. The JJA provides for Protection Homes or Special Homes where such girls have to be kept for safe custody, because the fear is that they may be driven back to the brothels. The Board should have been alive to this. By asking the girls not to enter into the local jurisdiction of Social Service Branch, the Board has treated them as confirmed prostitutes. Such orders can be passed under Section 20 of the PITA which empowers a Magistrate to order removal of prostitutes from any place and prohibit them from re-entering it. We wonder how the Board could have passed such harsh order to the detriment of the minor girls. The learned Magistrate presiding over the Board has observed that he had personally asked the girls and they had shown eagerness to be released. **There is no provision under the JJA whereunder, the board can release the minor girls because they desired to be released without giving a thought to their rehabilitation and the frightening possibility of their re-entry into brothels.**"

(Emphasis supplied)



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172. On a careful consideration of the matter, the following directions were inter alia made by the court : -

“37. We feel that the following directions may prevent recurrence of such events in future.

(A) **No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection**, as defined by Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. **When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.**

(B) **A Magistrate before whom persons rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place are produced, should, under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a Juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.** (Emphasis supplied)

173. So far as release of a person under eighteen years of age under section 16 and 17 of the IT Act, 1956 are concerned, the Division Bench of the Bombay High Court directed as follows : -

“(C) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place



should only be released after an inquiry has been completed by the Probation Officer.

(D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

(E) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.

(F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

(G) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act, 1956." (underlining by me)

174. It was observed by the High Court of Bihar in the judgment reported at AIR 1989 Pat 217 *Krishna Bhagwan v. State of Bihar* that an extraordinary procedure has been prescribed under the JJ Act for enquiring into the offence alleged to have been committed by child/juvenile and punishment to be imposed, the basic approach appears to be curative instead of punitive. It was held by the Bench that the Juvenile Justice Act is a solemn promise by the present to the future. Those who are charged with the statutory duty must not fall. Obedience to law by all concerned alone shall ensure justice to delinquent children.



....

222. On the question under examination; the observations of the Supreme Court in the pronouncement reported at (1997) 8 SCC 114 : AIR 1997 SC 3021 *Gaurav Jain v. Union of India*. shed valuable light on the subject. In this case, the court was concerned with several writ petitions filed under Article 32 of the Constitution on behalf of the prostitutes claiming their right to be free citizens; right not to be trapped again, re-adjusted by economic empowerment, social justice and self sustenance thereby with equality of status, dignity of person in truth and reality and social integration in the main stream, being the magna carta. The court found that many prostitutes themselves were child prostitutes or had children residing with them. Addressing the plight and needs of such children, the court made several observations which throw light on the issue raised in the present case. A reading of the judgment would show that a child found engaged in prostitution has been referred to as a "neglected juvenile" which expression has been used synonymously as a "*child in need of care and protection*". The court considered the provisions of the Juvenile Justice Act and observed as follows : -

"35.A child brought to associate with a prostitute or is engaged in the prostitution or the profession of prostitution or another juvenile who leads an immoral or depraved life or one who is likely to be abused or exploited for immoral or illegal purposes for unconscionable gain is also a juvenile. The crime is not attached for identifying him/her as neglected juvenile; it is so in the case of a delinquent juvenile under the Act. They are to be kept in the juvenile home as a place of safety.

xxx xxx

37.Even, in certain cases a delinquent juvenile who commits an offence like begging, being the neglected juvenile, is



covered as a neglected juvenile and should not be treated as delinquent juvenile since he began begging due to destitution or was forced to beg by organised gangsters. Therefore, all the types of juveniles defined within the ambit of neglected juvenile, though attached with certain acts or omission, are punishable under law they still remain to be neglected juvenile and should be dealt with by the Welfare Board and he brought within the protective umbrella of the juvenile home established under Section 9.....

38. Every child who is found to be neglected juvenile should be dealt by the Board and should be brought within the protective umbrella of the juvenile home. The attribution as 'neglected children' is not social stigma; the purpose is to identify the children as juveniles to be dealt with under the JJ Act which is more a reformative and rehabilitated center rather than for punishing the child as criminal; and mend their behavior and conduct.The definition of 'neglected juvenile', therefore, should be interpreted broadly which is an important function for the purpose of identifying the groups of children who need care and attention and protection for rehabilitation. Their withdrawal from the protective umbrella of the JJ Act foils the goals set out; besides all measures to bring the neglected juvenile into the mainstream of the social status end up in failure and frustration.

39. Even if the economic capacity of the mother of neglected juvenile in the red light area to educate and to bring him up would not relieve the child from social trauma : it would always be adverse to keep the neglected juvenile in the custody of the mother or the manager of the brothel; thus, the child prostitute is unsafe and insecure. So, they should be rescued, cared for and rehabilitated. As stated earlier, the three C's, namely, counselling, cajoling and coercion of the fallen women to part with the child or child prostitute herself from the manager of the brothel is more effective, efficacious and



meaningful method to rescue the child prostitute or the neglected juvenile. The income criteria, therefore, is not a factor not to rescue the child prostitute or the neglected juvenile for rehabilitation.

40. It is of necessity to remember that the arms of law are long enough to mould the law to operate on the even keel. The coercive power with the law enforcement agency to rescue the child prostitute or the neglected juvenile, may not necessarily end up as a successful means. It would be last resort when all avenues fail. On the other hand, involvement of the nongovernmental organisations in particular women organisations which are more resourceful for counselling and cautioning, would make deep dent into the thinking mould of the fallen victims and would be a source of success for their retrieval from the prostitution or sending the neglected juvenile to the juvenile homes for initial treatment, psychologically and mentally, and will yield place to voluntaries to surrender guardianship of the child prostitute or neglected juvenile to the Welfare Board or to the NGOs to take custody of a child prostitute or the neglected juvenile for, care, protection and rehabilitation."

(Emphasis supplied)

223. We find endorsement of this spirit in the Juvenile Justice legislation and specifically recognized fundamental principles enumerated in Rule 3 of the Juvenile Justice (Care & Protection) Rules, 2007.

224. The fundamental principles contained in the JJ Rules are required to be abided by. They guide the application, interpretation and implementation of the statute by the State Government, JJB, CWC as well as the competent authority and agencies. These are premised on the presumption of the innocence of the child.

225. Rule 3(2)I(a) of the JJ Rules unequivocally declares the fundamental principle that a child is to be presumed to be innocent of any malafide or criminal



intent up to the age of eighteen years. Rule 3(2)I(b) mandates that a child's right to presumption of innocence shall be respected throughout the process of justice. Any unlawful conduct of a juvenile or a child or a juvenile in conflict with law which is done for survival or is due to environmental or situational factors or is done under control of adults, or peer groups, ought to be covered by the principles of innocence [Rule 3(2)(Ic)].

226. Under Rule 3(2)I(d)(i) the age of innocence is indicated as the age below which a juvenile or child or a juvenile in conflict with law cannot be subjected to the criminal justice system.

227. The JJ Rules, 2007 also statutorily recognise the principle of family responsibility. [Rule 3(2)(V)]. It is stated that the primary responsibility of bringing up children, providing care, support and protection shall be with the biological parents. Of course, an exception to this situation is provided when responsibility for the care of the child may be bestowed on willing adoptive or foster parents.

228. The inevitable and only answer to the second question formulated earlier in this judgment is that a person under eighteen years of age who is recovered in police action under Sections 15 and 16 of the IT Act, has to be treated as a '*child in need of care and protection*' within the meaning of the expression under the JJ Act 2000. Such person shall not be treated as a '*juvenile in conflict with law*'.

Conclusions

(i) A child is incapable of giving consent and any sexual behavior or activity involving a child renders the participating adult open to stringent penal action under several enactments. No penal liability vests on the child for the same.

(ii) **A bare reading of the statutory provisions, International Conventions & Treaties as well as the available jurisprudence manifests the statutory intendment that such child (i.e. a**



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child found begging is a street child, a working child or a child being or likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse or illegal acts as well as a child who is found vulnerable and likely to be inducted into drug abuse or trafficking) is not to be treated as an offender but is only to be treated as a victim hence as a '*child in need of care and protection*' within the meaning of the expression under the JJ Act.

(iii) A person under the age of eighteen years, if found involved in any aspect of trafficking or prostitution, within the meaning of the expression in the IT Act, 1956, or is rescued in police action under Section 15/16 of the IT Act cannot be treated as a 'juvenile in conflict with law' as defined Section 2(1) and has to be treated as a 'child in need of care and protection' as defined under section 2(d) of the JJ Act, 2000.

(iv) Notwithstanding the provisions of Section 17 and 17(A) of the Immoral Traffic (Prevention) Act, 1956 by virtue of Section 31(1) and 39(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is only the Child Welfare Committee constituted under Section 29 of the enactment which has the final authority in respect of the custody and restoration of a child victim - a child in need of care and protection.

(v) If a person rescued by the police under the IT Act, 1956 and produced before the Magistrate appears to be under 18 years of age, such person must forthwith be transferred to the Child Welfare Committee which shall proceed in the matter in accordance with the provisions of Sections 30, 31, 33 and other relevant provisions. If the child is found to be hailing from a place outside the jurisdiction of the Committee, the Committee shall ensure compliance with the provision of Section 38 of the JJ Act, 2000."

(Emphasis supplied)



The High Court of Delhi in the afore-quoted judgment holds that notwithstanding the provisions of Section 17 and 17(A) of the Act, by virtue of Section 31(1) and 39(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('JJ Act' for short), it is only the Child Welfare Committee constituted under Section 29 of the JJ Act which has the final authority in respect of the custody and restoration of a child victim. If a person rescued by the police under the Act and is produced before the Magistrate, appears to be under 18 years of age, such person must forthwith be transferred to the Child Welfare Committee which shall proceed in the matter in accordance with the provisions of Sections 30, 31 and 33 of the JJ Act and other relevant provisions. Further, the guidelines provided by the High Court of Bombay in **PRERANA** *supra*, referred to in the afore-quoted judgment, provide that when persons rescued under the Act are produced before the Magistrate, the Magistrate should under Section 17(2) of the Act, ascertain their ages on the very first time they are produced before him. If such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person



is a Juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.

12. In light of the afore-quoted judgment, I am of the considered view that the child cannot be handed over to the mother who is allegedly using her daughter in the prostitution racket. Therefore, the petition lacking in merit, stands ***rejected***.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

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List No.: 1 Sl No.: 1/CT:SS