

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

2026:PHHC:126435



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CRR-944-2018 (O&M)
Date of decision : 14.09.2026

Ajaib Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. H. B. S. Baidwan, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Mr. A. P. Batra, Advocate
for respondents No. 2 and 3.

MANISHA BATRA, J.(Oral)

1. Through the present revision petition, the petitioners seek setting aside of the order dated 06.02.2018 passed by the Court of learned Judicial Magistrate First Class, SAS Nagar, Mohali in case arising out of FIR No. 80 dated 20.09.2015, registered under Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 (*for short 'IT Act'*) and Sections 384 and 120-B of IPC at Police Station Banur, whereby charges for commission of offences punishable under Sections 3, 4 and 5 of the IT Act and Section 384 read with Section 120-B of IPC have been framed against petitioner No. 2, whereas charge under Section 384 of IPC was framed against petitioner No.1.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was originally registered on the basis of the statement made by petitioner No. 2 Goldy alleging therein that on 19.09.2015, after reaching Sector 43, Chandigarh, at about midnight, she was waiting for an auto to go to her husband at Baltana, Zirakpur. In the meanwhile, two young persons came on a red motorcycle and offered to drop her there. They took her to an empty house at Banur, where they forcibly took her inside and closed the gate. They made her drink liquor and forcibly established physical relations with her without her consent. One of them, while making a telephone call, disclosed his name as Mandeep Singh and asked somebody to come to his new house. After about half an hour, three more persons came there and they also established physical relations with her one after another without her consent. She raised alarm but one of them closed her mouth and threatened to kill her. She thereafter became unconscious. On regaining consciousness, she found the house locked from outside. She jumped over the boundary wall and, on inquiry from an old man, came to know that the house belonged to Mandeep Singh. She then went to the police and requested action against Mandeep Singh and four other persons. On the basis of the statement of Goldy, FIR No.80 dated 20.09.2015 was initially registered under Sections 376-D and 342 IPC against Mandeep Singh and four unknown persons.

3. During investigation, however, the police took a different view of the occurrence. As per the case subsequently set up in the challan, in fact Goldy had accompanied the accused persons to Banur and the physical relations were consensual. The investigation further alleged that Goldy, in connivance with her husband Rakesh Kumar, Mandeep Kaur, Ajaib Singh and Jagtar Singh, had

sought to put pressure upon the accused persons and extort money from their family members by getting a case under Section 376-D IPC registered against them. The police relied upon statements of witnesses as well as video CDs, CCTV footage and call records in support of this version. Consequently, Goldy, who had initially approached the police as the complainant, was herself joined as an accused during investigation. The police also alleged that Ajaib Singh had demanded money from the family members of the accused persons for getting their names deleted from the rape case. It was found that he had demanded an amount of Rs.4 lakhs from the mother of Parvinder Singh and had received Rs.1 lakh from his sister and Rs.5,000/- from Rakesh Kumar. The police ultimately presented challan against Goldy, Ajaib Singh and the other accused persons for offences under Sections 3, 4 and 5 of the IT Act and Sections 384 and 120-B IPC. Subsequently, vide order dated 06.02.2018, charges under Sections 120-B, 384 of IPC and under Sections 4 and 5 of the IT Act were framed against the petitioner No. 2, whereas charge under Section 384 of IPC was framed as against petitioner No. 1. The petitioners had filed applications seeking discharge but the same had been dismissed by the learned trial Court. Aggrieved thereof, the petitioners have filed this petition.

4. It is argued by learned counsel for the petitioners that the impugned order framing charges against them is not sustainable in the eyes of law. Petitioner No.2 Goldy was initially the complainant in the FIR and had specifically alleged that she was forcibly taken to Banur and subjected to gang rape. It is argued that during investigation, the police changed the entire version of the case and, instead of proceeding against the persons named by Goldy for the offence of gang rape, made Goldy herself an accused. It is argued that the

police, on the basis of the subsequent investigation, alleged that Goldy had accompanied the accused persons voluntarily and that the physical relations were consensual. It is further argued that the police falsely concluded that Goldy, in connivance with her husband Rakesh Kumar, Mandeep Kaur, petitioner No.1 Ajaib Singh and Jagtar Singh, had tried to extort money from the accused persons by getting a false case of gang rape registered against them. Learned counsel argued that there is no sufficient material to connect petitioner No.1 with the alleged offence of extortion. It is argued that the allegations regarding demand and receipt of money are based upon statements which are disputed and that the material collected during investigation does not establish the ingredients of Section 384 IPC against him. As regards petitioner No.2, learned counsel argued that she cannot be treated as an accused merely because the police subsequently changed its version of the occurrence. Learned counsel further argued that the police investigation is tainted and that the offence of gang rape was improperly converted into offences under the IT Act and Sections 384 and 120-B IPC. It is argued that the learned Magistrate failed to properly appreciate these circumstances while dismissing the protest petition and the applications for discharge. Hence, it is urged that the petition deserves to be allowed and the impugned order is liable to be set aside.

5. *Per contra*, learned State counsel has argued that the petitioners have been charge-sheeted after a detailed investigation and that the material collected during investigation is sufficient to proceed against them. It is argued that the police, during investigation, found material contrary to the allegations made in the original FIR and, accordingly, Goldy was also joined as an accused. The challan records the prosecution version that Goldy had

accompanied the accused persons for paid consensual sex and subsequently, along with the other persons, attempted to extort money from them by threatening them with a rape case. It is argued that at the stage of framing of charge, the Court is not required to undertake a detailed appreciation of the evidence or decide the truthfulness of the rival versions. The material on record only has to be examined for the purpose of finding out whether a prima facie case is made out. Learned State counsel, therefore, prayed for dismissal of the revision petition.

6. Learned counsel appearing for respondents No.2 and 3 has argued that the petitioners have been rightly proceeded against on the basis of the material collected during investigation. It is argued that the subsequent prosecution version regarding the role of Goldy and the allegations of extortion are matters of evidence and cannot be conclusively decided at the stage of framing of charge. It is further argued that the material collected by the investigating agency, including the statements of witnesses and electronic evidence, provides sufficient basis for the charges framed by the learned trial Court. The allegations of false implication and defective investigation raised by the petitioners are disputed questions of fact which can be examined during trial. Hence, it is urged that the petition is liable to be dismissed.

7. This Court has heard the rival submissions of learned counsel for the parties.

8. Before examining the material against petitioner No.2 Goldy, it would be appropriate to notice the relevant provisions of the IT Act.

4. Punishment for living on the earnings of prostitution.

(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(2) Where any person is proved-

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1):

Provided that no such presumption shall be drawn in the case of a son or daughter of a prostitute, if the son or daughter is below the age of eighteen years.”

5. Procuring, inducing or taking woman or girl for the sake of prostitution.

(1) Any person who-

(a) procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution; or

(b) induces a woman or girl to go from any place, with the intent that she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a woman or girl, or causes a woman or girl to be taken, from one place to

another with a view to her carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a woman or girl to carry on prostitution shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees.

(2) In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than two years but not more than five years and also with fine which may extend to two thousand rupees.

(3) An offence under this section shall be triable-

(a) in the place from which a woman or girl is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such woman or girl is made; or

(b) in the place to which she may have gone as a result of the inducement or to which she is taken or caused to be taken or an attempt to take her is made.”

9. A plain reading of Section 4 of the IT Act shows that it is attracted where a person knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl. The allegation against petitioner No. 2 Goldy is not that she was living on the earnings of prostitution of some other woman or girl. On the contrary, the prosecution case is that she herself allegedly participated in prostitution. The presumption under sub-section (2) is also intended to operate against a person living on the earnings of prostitution of another person. There is no allegation in the present case that Goldy was receiving or appropriating the earnings of any other woman or girl or was acting as a tout or pimp on behalf of another prostitute. Thus, the basic

requirement of Section 4 is absent and, hence, charge under this section cannot be sustained against her.

10. Similarly, Section 5 deals with procuring, inducing or taking a woman or girl for the sake of prostitution. The provision requires an act directed towards another woman or girl, such as procuring, inducing, taking or causing or inducing her to carry on prostitution. No such role has been attributed to Goldy. The prosecution case is confined to the allegation that she herself accompanied the other accused persons and allegedly participated in sexual relations for consideration. There is no allegation that she procured or induced any other woman or girl for prostitution, took any woman from one place to another for that purpose, or caused or induced any other woman or girl to carry on prostitution. Consequently, even the basic ingredients of Section 5 are not attracted against petitioner No.2.

11. It is true that at the stage of framing of charge the Court is not required to undertake a detailed appreciation of evidence. However, the Court is required to see whether the allegations and the material collected during investigation disclose the basic ingredients of the offence sought to be charged. A charge cannot be sustained merely because the investigating agency has mentioned a particular penal provision in the challan, when the facts alleged, even if taken at their face value, do not constitute the ingredients of that offence. In the present case, even if the subsequent prosecution version regarding Goldy is taken at its face value, it only alleges that she voluntarily accompanied the other accused persons and participated in sexual relations for consideration. Such allegation, by itself, does not make out an offence under

Sections 4 or 5 of the IT Act. The prosecution has not attributed to her any role in living on the earnings of another woman's prostitution, or procuring, inducing or taking another woman or girl for the purpose of prostitution. The charges under Sections 4 and 5 of the Act framed against petitioner No.2, therefore, cannot be sustained.

12. So far as petitioner No.1 Ajaib Singh is concerned, the position is different. The prosecution has specifically alleged that he in connivance with co-accused including petitioner No. 2 demanded Rs.4 lakhs from the family members of co-accused Parvinder Singh for getting their names deleted from the rape case and that he received amounts of Rs.1 lakh from the sister of co-accused Parvinder Singh and Rs.5,000/- from Rakesh Kumar. There is also material in the form of statements and electronic evidence relied upon by the prosecution in support of these allegations. Whether these allegations are ultimately proved or whether the statements relied upon by the prosecution are trustworthy are matters to be examined during trial. At this stage, the material cannot be subjected to a detailed appreciation. The allegation against petitioner No.1, therefore, prima facie discloses the ingredients of an offence under Section 384 IPC. Further, a perusal of the record reveals that it was in connivance with petitioner No. 2 and other co-accused that petitioner No. 1 had extorted money from the abovenamed persons. Hence, charge under Section 120-B IPC is sustainable qua petitioner No. 2.

13. In view of the above discussion, the present revision petition is *partly* allowed. The charges framed against petitioner No.2 Goldy under Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 are quashed.

The charge under Section 384 IPC framed against petitioner No.1 Ajaib Singh is maintained. The charges under Section 120-B read with Section 384 of IPC against petitioner No.2, as framed by the learned trial Court, shall also remain unaffected by this order. The learned trial Court shall proceed with the case in accordance with law.

14.09.2026
Waseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No