



**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, UNA
Criminal Case No. 767 of 2019**

Field	Details
Court	Una Taluka Court
CNR Number	GJGS040010002019
Filing - Registration Number	CC/767/2019
Date of Filing - Registration	20-04-2019
Judgment Date	09-04-2026
Total Duration	6 Years, 11 Months, 19 Days
Complainant	Government of Gujarat
Accused	MARIYAMBEN W/O SAFIBHAI MANSURI
Petitioner Advocate	APP
Respondent Advocate	B.B.SOLANKI

FORM-A

Criminal Case No. 767 of 2019

Detail	Information
Judgment Date	13/10/2025
Criminal Case No.	767/2019
Sections of Offence	Under Section 3(1), 5(1)(a)(d), 5(1)(b) of The Immoral Traffic (Prevention) Act.
Crime Reg. No.	Nawabandar Marine Police Station C.R. No. I-25/2018
Complainant	State of Gujarat
For Prosecution	Ld. APP Mr. K.D. Vasava
Accused Persons	(1) Mariyamben w/o Safibhai Daudbhai Mansuri (2) Rajubhai Devatbhai Lakhanotra (3) Muno alias Harishbhai Lambodar Giri (4) Safibhai Daudbhai Mansuri (Abated)
For Defense	Ld. Advocate Mr. S.V. Kadri (For Accused 1 & 4) Ld. Advocate Mr. B.B. Solanki (For Accused 2) Ld. Advocate Mr. N.V. Rathod (For Accused 3)

FORM-B

Criminal Case No. 767 of 2019

Detail	Date
Date of Offence	28/06/2018
Date of F.I.R.	28/06/2018
Date of Framing Plea/Charge	22/07/2019
Date of Commencement of Evidence	27/07/2019
Date of Reserving for Judgment	29/09/2025
Date of Judgment	9/04/2026
Date of Sentence Order (if any)	-

Sr. No.	Name of Accused	Date of Arrest	Date of Release on Bail	Act & Sections	Verdict (Acquittal/Conviction)	Sentence Imposed	Period of Detention (U/S 468 BNSS)
1.	Mariyamben w/o Safibhai Daudbhai Mansuri	28/06/2018	10/07/2018	ITPA Sec-3(1), 5(1)(a)(d), 5(1)(b)	Acquitted	-	-
2.	Rajubhai Devatbhai Lakhanotra	28/06/2018	07/07/2018	ITPA Sec-3(1), 5(1)(a)(d), 5(1)(b)	Acquitted	-	-
3.	Muno alias Harishbhai	01/07/2018	10/07/2018	ITPA Sec-3(1), 5(1)(a)	Acquitted	-	-

Sr. No.	Name of Accused	Date of Arrest	Date of Release on Bail	Act & Sections	Verdict (Acquittal/ Conviction)	Sentence Imposed	Period of Detention (U/S 468 BNSS)
	Lambodar Giri	018	18	(d), 5(1)(b)			
4.	Safibhai Daudbhai Mansuri	30/09/2018	05/10/2018	Abated	-	-	-

FORM-C ORAL AND DOCUMENTARY EVIDENCE

Sr. No.	Exhibit No.	Description of Document
1.	11	Deposition of Witness Jahanarabegum Abdulmajid Shadar
2.	20	Deposition of Witness Ashwinbhai Veljibhai Sankhat
3.	21	Deposition of Witness Ravibhai Bachubhai Solanki
4.	22	Deposition of Witness Hetalben Jesingbhai Jankat
5.	24	Deposition of Witness Jagdishbhai Manubhai

Sr. No.	Exhibit No.	Description of Document
		Chavda
6.	25	Panchnama regarding arrest of accused and seizure of Mudamal
7.	26	Complaint (F.I.R.)
8.	31	Deposition of Panch Witness Nanubhai Chinabhai Bhaliya
9.	32	Deposition of Panch Witness Nileshbhai Umashankarbhai Bhatt
10.	37	Deposition of Complainant Samirbhai Ishakbhai Mandhara
11.	38	Order of Investigation
12.	39	Copy of Passport

JUDGMENT

1.Facts of the Prosecution Case

The prosecution case, in brief, is that on 28/06/2018 at about 20:10 hours, a complaint being C.R. No. I-25/2018 came to be registered at Navabandar Marine Police Station, District Gir Somnath, on the basis of information received by PSI S.I. Mandhara to the effect that accused No.1 Mariamben was running a brothel at her residence situated near the poultry centre on Chikhli Road, Village

Kob, Taluka Una. Acting upon the said secret information and after preliminary verification, a raiding party was constituted, including police staff and panch witnesses, and a raid was carried out at about 17:45 hours. During the raid, accused No.1 Mariamben was found present in the house, and in an adjoining room accused No.2 Rajubhai Devatbhai Lakhanotra was found in a semi-naked condition along with one woman, namely Jahanara Begum, who was allegedly brought from Bangladesh on the pretext of providing domestic work. It is alleged that accused No.1 had arranged her premises as a brothel and compelled the said woman to indulge in prostitution with various customers for monetary consideration, while accused No.2 was found as a customer and accused No.3 Muno alias Harishbhai Lambodar Giri had assisted in procuring and bringing the woman to the said place. During the raid, cash amounting to ₹1,500/- and certain mobile phones were seized under panchnama. After completion of investigation, charge-sheet came to be filed against the accused persons for the offences punishable under Sections 3(1), 5(1)(A), 5(1)(B) and 5(1)(D) of the Immoral Traffic (Prevention) Act.

2.Appearance of the Accused

Upon filing of the charge-sheet, summons came to be issued against the accused persons. In response thereto, accused No.1 **Mariamben w/o Safibhai Mansuri** and accused No.2 **Rajubhai Devatbhai Lakhanotra** appeared before the Court and were released on bail as per law. Accused No.3 **Muno alias Harishbhai Lambodar Giri** was reported to be in judicial custody in another case and was subsequently produced before the Court; however,

during the course of trial, he remained absent on several occasions and his right of cross-examination of certain witnesses came to be closed. Accused No.4 **Safibhai Daudbhai Mansuri** expired during the pendency of the proceedings and, by order below Exhibit 53 dated 21/04/2025, the proceedings against him were ordered to be abated. Thereafter, copies of police papers were furnished to the accused under Section 207 of the Code of Criminal Procedure. Upon hearing both sides, charge came to be framed against the accused persons for the offences punishable under Sections 3(1), 5(1)(A), 5(1)(B) and 5(1)(D) of the Immoral Traffic (Prevention) Act, to which they pleaded not guilty and claimed to be tried.

3.Framing of Charge

Upon perusal of the charge-sheet papers, FIR, panchnama, statements of witnesses recorded under Section 161 of the Code of Criminal Procedure, and other documents produced by the prosecution, and after hearing the learned Assistant Public Prosecutor as well as the learned advocate for the accused, this Court found that there existed prima facie material against accused No.1 Mariamben w/o Safibhai Mansuri, accused No.2 Rajubhai Devatbhai Lakhanotra and accused No.3 Muno alias Harishbhai Lambodar Giri for the offences punishable under Sections 3(1), 5(1)(A), 5(1)(B) and 5(1)(D) of the Immoral Traffic (Prevention) Act.

Accordingly, charge was framed and read over and explained to the accused in vernacular vide exhibit-3. The substance of

accusation was that on 28/06/2018 at Village Kob, Taluka Una, accused No.1 kept and managed her residential premises as a brothel and allowed the same to be used for prostitution; that she procured and induced witness Jahanara Begum for the purpose of prostitution; that accused No.2 was found indulging in sexual activity with the said woman in furtherance of such illegal activity; and that accused No.3 assisted in bringing the said woman and in running the said illegal business. The accused pleaded not guilty to the said charge and claimed to be tried. Therefore, the case was posted for recording of prosecution evidence.

4.Arguments of Both Sides

The learned Assistant Public Prosecutor, while reiterating the prosecution case, submitted that the raid was conducted strictly in accordance with law after receipt of credible and specific secret information. It was argued that the information was verified through police sources and a raiding party consisting of PSI, DySP, female police personnel and panch witnesses was formed, which shows procedural compliance. The prosecution emphasized that the presence of accused No.1 in the house, coupled with the discovery of accused No.2 and victim Jahanara Begum in a semi-naked condition in a separate room, clearly establishes that the premises was being used for immoral activities.

It was further argued that the testimony of the victim is natural and trustworthy. According to the prosecution, the victim has clearly stated that she was brought from Ahmedabad by accused No.3 and that accused No.1 forced her into prostitution and collected money

from customers. The learned APP contended that in offences of this nature, independent witnesses are rarely available due to the clandestine character of the activity, and therefore reliance on police witnesses is not fatal to the case. Minor discrepancies or omissions regarding the vehicle number, description of clothing, or exact denomination of currency notes are trivial in nature and do not demolish the core prosecution case. The recovery of ₹1,500/- and mobile phones from the premises, according to the prosecution, supports the inference that the house was used as a brothel. It was therefore submitted that the ingredients of Section 3 (keeping a brothel) and Section 5 (procuring and inducing a person for prostitution) of the Immoral Traffic (Prevention) Act are fully established against accused No.1 and accused No.3, and accused No.2 was found actively participating in the act.

On the other hand, the learned advocate for the accused elaborately argued that the prosecution has failed to prove the foundational facts necessary to attract the provisions of the Immoral Traffic (Prevention) Act. It was contended that the testimony of the victim suffers from serious material omissions and improvements. In her police statement, she did not state that she was locked in a cupboard, nor that she was forced into prostitution three times on the first day, nor that accused No.1 took away the entire money. These improvements, according to the defence, are material and affect her credibility.

The defence further argued that the victim admitted she had come from Ahmedabad to Una of her own will and that she is facing proceedings under the Foreigners Act. She initially furnished a

false address and later admitted being a Bangladeshi national. This conduct, according to the defence, casts serious doubt on her reliability and suggests motive to implicate the accused falsely to shield herself from deportation or penal consequences.

It was also strongly contended that no independent witness from the locality was examined to prove that the premises was used as a brothel. The house is situated on a public road with frequent traffic, and no neighbour was examined to state that prostitution was being carried out there. There is no documentary or electronic evidence showing repeated visits of customers. No marked currency was used. No customer, except accused No.2, was apprehended. Mere finding of a man and woman in semi-naked condition does not ipso facto prove commercial sexual exploitation.

Regarding accused No.3, it was argued that he was not present at the time of raid and there is no independent corroboration of the victim's statement that he procured her. As regards accused No.2, it was contended that even assuming presence in the room, there is no proof of payment or commercial intent.

The defence also emphasized that the complainant himself acted as the investigating officer, which affects the fairness and impartiality of investigation. Important procedural details such as vehicle number, identity of driver, and complete description of seized articles were not properly recorded.

It was finally submitted that the prosecution must prove its case beyond reasonable doubt, and in the present matter, the evidence is

doubtful, inconsistent, and insufficient to establish the essential ingredients of Sections 3 and 5 of the Act. Therefore, the accused are entitled to benefit of doubt and consequent acquittal.

Upon hearing both sides at length and perusing the entire record, the matter was kept for pronouncement of judgment.

5. Written Arguments Filed on Behalf of the Accused

The accused persons have also submitted detailed written arguments on record through their learned advocate. In the written submissions, it is contended that the entire prosecution case is fabricated and based solely on the interested testimony of police officials and a victim who herself was facing proceedings under the Foreigners Act. It is specifically urged that the complainant and the investigating officer being the same person has caused serious prejudice to the accused and renders the investigation doubtful and biased.

It is further submitted in writing that the star witness, Jahanara Begum, made substantial improvements before the Court which were not stated in her police statement, particularly regarding alleged confinement in a cupboard, forcible prostitution, and taking of money by accused No.1. These material omissions, according to the defence, go to the root of the prosecution case and create serious doubt about her credibility. The written arguments also highlight that she admitted coming to Una of her own will and that no documentary or independent evidence proves coercion or inducement.

The accused have further contended in their written submissions that no independent neighbour or local resident was examined to prove that the premises was being used as a brothel. No customer other than accused No.2 was found. No marked currency or documentary proof of commercial transaction was produced. The mere presence of a man and woman in a semi-naked condition does not constitute an offence under Sections 3 or 5 of the Immoral Traffic (Prevention) Act unless commercial exploitation is strictly proved.

Regarding accused No.3, it is submitted that he was not present at the time of the raid and there is no independent corroboration of the allegation that he procured the victim. The defence has also emphasized procedural lapses such as non-recording of vehicle details, absence of proper independent panch witnesses, and lack of specific evidence of habitual use of premises as a brothel.

On these grounds, it is prayed in the written arguments that the prosecution has failed to establish the essential ingredients of the alleged offences beyond reasonable doubt, and therefore all accused deserve to be acquitted by extending the benefit of doubt.

6.Recording of Further Statement under Section 313 of Cr.P.C.

After completion of the prosecution evidence, further statements of accused No.1 **Mariamben w/o Safibhai Mansuri**, accused No.2 **Rajubhai Devatbhai Lakhanotra**, and accused No.3 **Muno alias Harishbhai Lambodar Giri** were recorded under Section 313 of the Code of Criminal Procedure for the purpose of enabling

them to personally explain the incriminating circumstances appearing against them in the evidence of prosecution witnesses.

All incriminating evidence, including: the allegation of running a brothel at Village Kob, The presence of accused No.2 and the victim in a semi-naked condition, The alleged procurement of Jahanara Begum, The recovery of ₹1,500/- and mobile phones, The statements of police witnesses and the victim, were put to the accused persons. In response thereto: Accused No.1 denied all allegations and stated that she has been falsely implicated in the present case. She stated that she is a housewife engaged in agricultural and poultry activities and that no such illegal activity was conducted at her residence. Accused No.2 denied that he was involved in any immoral activity and stated that he had visited the place for lawful purposes and was falsely implicated by the police. Accused No.3 denied having brought or procured the victim and stated that he had no connection with the alleged offence. All the accused persons stated that the police have filed a false case against them. They did not admit any incriminating circumstance. No specific explanation was offered regarding the alleged recovery of cash and mobile phones. The accused did not initially admit the prosecution case and claimed innocence. Thereafter, the matter was posted for defence evidence.

7.Points for Determination and Findings Thereon

Upon consideration of the charge, evidence adduced, and submissions of both sides, the following points arise for determination:

Point.no1

Whether the prosecution proves beyond reasonable doubt that accused No.1 Mariamben w/o Safibhai Mansuri kept or managed, or knowingly allowed her premises at Village Kob to be used as a brothel, thereby committing an offence punishable under Section 3(1) of the Immoral Traffic (Prevention) Act?

Finding: In the Negative.

Point.no2

Whether the prosecution proves beyond reasonable doubt that accused No.1 and accused No.3 procured, induced, or took PW–Jahanara Begum for the purpose of prostitution, thereby committing an offence punishable under Section 5(1)(A), (B) or (D) of the Immoral Traffic (Prevention) Act?

Finding: In the Negative.

Point.no3

Whether the prosecution proves beyond reasonable doubt that accused No.2 Rajubhai Devatbhai Lakhanotra was liable under Sections 3 and 5 of the Immoral Traffic (Prevention) Act for his alleged involvement in the said offence?

Finding: In the Negative.

Reasons for Findings

The prosecution has failed to prove habitual use of the premises as a brothel. No independent witness has supported the allegation. The testimony of the victim suffers from material omissions and improvements. The commercial element of prostitution is not

proved by cogent evidence. Accused No.2 was found allegedly present at the spot, but mere presence does not attract Sections 3 to 5 of the Act in absence of proof of management or procurement. Accused No.3 was not present at the time of raid and no independent evidence establishes procuring. Thus, the prosecution has failed to establish the charges beyond reasonable doubt, and the accused are entitled to benefit of doubt.

8. ORAL AND DOCUMENTARY EVIDENCE ADDUCED ON THE SIDE OF PROSECUTION

Taking into account the oral and documentary evidence produced on record and the arguments of both parties, the prosecution examined Witness **Jahanarabegum Abdulmajid Shadar at Exh-11**. She stated in her examination-in-chief that she previously lived in Ahmedabad. She is originally from Bangladesh. She was married when she lived in Bangladesh. She has two sons named Rasel and Suraya. Her husband's name is Rafiqur. Her husband and children live in Bangladesh. She had a Bangladeshi passport. She does not know exactly when she came to India. She entered India through the Benapole border. She does not know from which date to which date her visa to stay in India was valid. She knows her visa was for three months. She took a ticket from Howrah station and came to Ahmedabad. She lived in the Chandlodiya area of Ahmedabad. She stayed in Chandlodiya for two-three months. From Chandlodiya, she came to Mariyamben's house in Kob. She does not know Mariyam, she knows Munna. The witness identifies Mariyamben before the Court. A Bangladeshi girl introduced her to Munna. Her introduction to Munna happened in Ahmedabad.

The girl who introduced her went back to her village; she does not know her name. Munna brought her to Mariyamben's place. Mariyam told her to do household work. Mariyam has farming land in Kob village. Mariyam made her do "wrong work" (illicit acts). Mariyam used to lock her in a cupboard at night. Mariyam has five children. A lover named Raju also lived with Mariyam. Mariyam made her do wrong acts with outsiders. The police caught her on the day she arrived in Kob village. She was made to do wrong acts on the very day she arrived. She was made to do wrong acts three times on the day she arrived. Mariyamben used to take money for doing wrong acts; no money was given to her. She does not know how much money Mariyamben took for the wrong acts. When she came to Kob, she did not have her passport with her. Her passport was at her room in Ahmedabad; this room was rented. The police took her passport from her. When the police caught her, Mariyam, her lover Raju, and many village people were present. When the police came, Mariyam locked her in the cupboard, and the police told Mariyam to open the cupboard. Mariyam told the police that the key to the cupboard was with her husband, and the police got the cupboard opened. The witness identifies the accused before the Court. Upon showing the passport to the witness, she identifies it.

Cross-Examination: In cross-examination on behalf of Accused No. 1 and 4, she admitted that she came to Mariyam's place to do household work. The witness stated that Munna seated her in a vehicle from Ahmedabad, she got off at Una, and from there Mariyamben took her. She admitted that she came towards Una

from Ahmedabad of her own will. Mariyamben was doing farming work and also has five children. Defense asked a leading question: "What time did you reach Kob from Una?" She replied she reached Kob in the morning, does not remember the exact time. She admitted that when the police caught them, village people had also gathered. The witness voluntarily stated that the village people had quarreled there and called the police. When the police came to Mariyamben's house, Mariyamben's husband was not present there. When the so-called wrong act happened with her, Mariyam's husband was not present. Mariyam's husband lived in Una from before. She admitted she did not state in her statement before the police that Mariyam forced her to do wrong acts and had locked her in a cupboard. She did not state in her police statement that Mariyam took the money for the wrong acts and did not give her money. She admitted that she did not state to the police that Mariyam locked her in the cupboard when the police came and that the key was with her husband. She does not know that a land case is going on between Mariyam and the neighbors. The police have registered a crime against her under the Foreigners Act. She answered other questions in the negative.

Cross-Examination for Accused No. 2: In cross-examination, she was asked: "Are you educated?" She replied she has not studied but knows how to sign. Defense asked: "How many times have you come to India before coming this time?" She replied this is the first time she came to India. Defense asked: "Who made the visa and passport for you to come to India?" She replied an agent in Bangladesh made it. Defense asked: "You did not state to the

police from which date to which date the visa is valid?" She replied she is not educated so she does not know. She admitted she knows she got a visa for three months. She did not realize her three-month visa had expired. She knows she stayed in the Chandlodiya area of Ahmedabad for four months. She did not state to the police that a Bangladeshi girl introduced her to Munna. She does not know the name and address of the girl who introduced her to Munna. The witness voluntarily stated that the girl's name was Champa and she was from a place named Khulna in Bangladesh. Defense asked: "You cannot understand Gujarati language?" She replied she can understand a little bit. She answered other questions in the negative.

In this case, the prosecution examined Witness **Ashwinbhai Veljibhai Sankhat at Exh-20**. He stated in his examination-in-chief that around 28/06/2018, he was serving as an unarmed constable at Nawabandar Marine Police Station. At that time, his PSI Mr. Mandhara received information that Mariyamben of Kob village was conducting prostitution in her house. He explained this information to the staff and asked to verify it, so he verified it through his private informants and found the fact to be true. Then his PSI informed the Dy. Superintendent of Police. When he came, staff members Ravibhai, Hetalben, etc., gathered at Tad Checkpost, and the Dy.S.P. arrived there. They called panchas, made a preliminary panchnama, and left for Kob. Upon reaching Mariyamben's house, PSI asked the name of the woman present, who stated it was Mariyamben. Checking the adjacent room of this house, a man and a woman were found in a semi-nude condition.

The man's name was asked, stating Rajubhai Jakhotra, and the woman's name was Jahanara. Rajubhai was from Bhadashi village, and a mobile phone was seized from him. Upon the woman constable performing a body search of Jahanara, an Itel company mobile was found. Upon further questioning Jahanara, she stated her native place was Kolkata. Upon body search of Mariyamben, currency notes of different denominations amounting to fifteen hundred rupees and a total of three mobiles of different companies were found. Thus, as Mariyamben and her husband Safibhai were running a brothel by illegally keeping Jahanara in their residential house, Mariyamben and Rajubhai were detained from the spot. The panchnama of the proceedings regarding this incident was completed on the spot, and his PSI Mr. Mandhara dictated the complaint and took his statement. The witness identifies the accused before the Court.

Cross-Examination: In cross-examination for Accused No. 1, 2, and 4, he admitted that he did not state in his statement in which vehicle they went for the raid. It is not necessary to make an entry in the police station if one has to go for investigation or based on information to any place. The complainant is his superior officer. Defense asked: "Who went to call the panchas?" He replied he went. He admitted that he did not state in the statement the number and type of vehicle or the driver's name in which they went. He did not describe in the statement what type of clothes the persons found were wearing. Mariyamben and Safibhai have agricultural land and a house in the 'Wadi' (farm) in Kob village. The accused have a poultry farm in Kob village. Mariyamben's farm, house,

and poultry farm are adjacent to each other. The place of the incident is located on a public road. Movement of people and vehicles is constant on the road. He does not know that Mariyamben has a dispute regarding land with her neighbor. He does not know that suits have been filed in court regarding this and a complaint was filed in Nawabandar Police Station. Defense asked: "Did Nanu China give you false information regarding this Mariyamben?" He replied Nanu China gave him no information. He does not know that proceedings for an offense under the Foreigners Act have been done at this place.

Cross-Examination for Accused No. 3: He admitted that other than going in the raid, he knows nothing else. When they went for the raid, Accused No. 3 was not present there. The place of the incident is not owned by Munnabhai. He has not learnt that Accused No. 3 came to Kob village.

In this case, the prosecution examined Witness **Ravibhai Bachubhai Solanki at Exh-21**. He stated in his examination-in-chief that from 2014 to 2019, he served as a constable at Nawabandar Police Station. On 28/06/2018, while he was present at the police station, PSI Mr. S.I. Mandhara informed that he received information that Mariyamben runs a brothel next to the poultry farm in the Wadi area of Kob village. Explaining this to them and the staff, the PSI informed the Dy.SP regarding this. When he came, the staff along with PSI and ASI Mr. A.V. Sankhat called panchas at Tad Checkpost and made a preliminary panchnama there. Then, along with the staff and panchas, they reached the place of information at Kob village and conducted a

raid. There was a tiled house with a veranda (Osari) where a lady was present. PSI asked her name in front of panchas. She stated her name as Mariyamben, Res. Kob. In the adjacent room, PSI checked in front of panchas, and a man and a woman were found in a semi-nude condition. Upon asking names, the woman stated Jahanara Res. Kolkata, and he does not remember the man's name currently but he was a resident of Bhadashi. PSI got a body search done for both, and one mobile each was found from their possession which was seized. Cash of Rs. 1500/- and a mobile were found from the possession of Mariyamben Res. Kob, which PSI seized in front of panchas. Upon questioning Jahanaraben, she stated Mariyamben brought her for labor work and made her do the business of selling her body. Dy.SP Dr. J.M. Chavda made a panchnama regarding this on the spot, detained both accused, and PSI gave a complaint against the accused. Police took his statement.

Cross-Examination: In cross-examination for Accused No. 1, 2, and 4, he admitted that he did not state in his statement in which vehicle they went for the raid. The witness voluntarily says they went in a government vehicle. It is not necessary to make an entry in the police station if one has to go for investigation or based on information. The complainant is his superior officer. Defense asked: "Who went to call the panchas?" He replied Mr. Sankhat went. He admitted that he did not state in the statement the number and type of vehicle or the driver's name. He did not describe the clothes of the persons found in the statement. Mariyamben and Safibhai have agricultural land and a house in the Wadi in Kob

village. The accused have a poultry farm in Kob village. The farm, house, and poultry farm are adjacent. The place is on a public road. Traffic is constant. Mariyamben has a dispute with her neighbor regarding land. He does not know about court suits or complaints in Nawabandar PS. He does not know about Foreigners Act proceedings at this place.

Cross-Examination for Accused No. 3: He admitted that other than going in the raid, he knows nothing else. Accused No. 3 was not present there. He does not know that the place is not owned by Munnabhai. He has not learnt that Accused No. 3 came to Kob village.

In this case, the prosecution examined Witness **Hetalben Jesingbhai Jankat at Exh-22**. She stated in her examination-in-chief that she has been serving as a constable at Nawabandar Police Station since 2018. On 28/06/2018, PSI Mr. Mandhara informed the staff that information was received that a brothel is being run by a woman named Mariyam at Kob village. PSI sent PC Shantibhai to verify this fact. Upon finding the fact to be true, PSI informed the Dy.SP regarding this. The staff went with the PSI to Tad Checkpost. Dy.SP Mr. Chavda came there. PSI informed him of the tip-off. Dy.SP sent Mr. Sankhat to call two panchas, and he brought two panchas. The officer informed the panchas about the tip-off and made a preliminary panchnama on the spot. Then staff and panchas went to the place at Kob village. There was a tiled house. A woman was in the house; upon asking her name, she stated Mariyamben. Upon asking about the house, Mariyamben stated it was hers. In the adjacent room, a woman and a man were

found in semi-nude condition. The man stated his name as Rajubhai Devayatbhai Jakhotra and the woman stated Jahanaraben Islam. Upon searching the woman, a mobile was found. A mobile was found from Rajubhai. Upon questioning Jahanaraben, she stated Mariyamben brought her here for work and made her do body trade. Dy.SP made a panchnama on the spot, detained Mariyamben and Rajubhai, and PSI gave a complaint. Police took her statement.

Cross-Examination: In cross-examination for Accused No. 1, 2, and 4, she admitted she did not state the vehicle details in her statement. Witness voluntarily says they went in a government vehicle. Entry in the police station is required if going for investigation. The complainant is her superior. Defense asked: "Who went to call panchas?" She replied Mr. Sankhat. She admitted the vehicle number/type/driver name is not in the statement. Description of clothes of persons found is not in the statement. Mariyamben and Safibhai have land and house in Kob. Poultry farm is there. All are adjacent. The place is on a public road with constant traffic. She does not know about the land dispute with the neighbor or court cases/complaints. She does not know about Foreigners Act proceedings.

Cross-Examination for Accused No. 3: She admitted knowing nothing other than the raid. Accused No. 3 was not present. She does not know the place is not Munnabhai's property. She has not learnt that Accused No. 3 came to Kob.

In this case, the prosecution examined Witness **Jagdishbhai Manubhai Chavda at Exh-24**. He stated in examination-in-chief

that on 28/06/2018, he was serving as Dy.SP at Veraval. That day, Nawabandar PSI Mandhara called him stating that Mariyamben living near the poultry farm in Wadi area of Kob village calls women from outside and male customers to her residential house and arranges for sexual pleasure. Upon knowing this, he left Veraval for Una and met at Tad Checkpost. Two panchas were called and explained the tip-off. Preliminary panchnama was done from 17:00 to 17:15 hours. Then police staff and panchas reached the place at 17:45 hours and conducted the raid. There was a two-room house with foreign tiles. A man and a woman were present in the veranda. Upon asking the name in front of panchas, the woman stated Mariyamben. Going into the adjacent room, a man and a woman were found in semi-nude condition. The man stated his name as Rajubhai and the woman as Jahanara Rafiq Res. Kolkata. Body search of the woman by the female police personnel yielded an Airtel mobile. Jahanara stated Mariyamben brings her here for such work. Body search of Rajubhai yielded a mobile with a broken display and another Airtel mobile. Also, body search of Mariyamben by female police yielded Rs. 1500/- cash. All items were seized. Accused were detained. Panchnama of this proceeding was completed on the spot. Showing the original panchnama, he identifies his signature and panchas' signatures (Exh-25). Then PSI Mandhara submitted a complaint under Immoral Traffic Act provisions in his presence. Showing the complaint (Exh-26), he identifies his signature as 'Before Me' and PSI Mandhara's signature. He gave the complaint and panchnama papers to PSI Mandhara and left.

Cross-Examination: In cross-examination for Accused No. 1 to 4, he admitted that the vehicle number/type in which they reached is not written in the panchnama. During the raid, Jahanara stated her address. Jahanara stated an address of Bengal state. He stated a woman and a man were in semi-nude condition in the room, but their clothes were not seized. Bra, knickers, etc. undergarments of the man or woman were not seized from the spot. It did not happen that condoms were found and seized. The SIM card numbers of seized phones are not written in the panchnama. No documentary evidence showing Accused No. 1 and 4 as owners of the raid place was seized.

In this case, the prosecution examined Panch Witness **Nanubhai Chinabhai Bhaliya at Exh-31**. He stated in examination-in-chief that he knows about the panchnama. There is a house near the boundary of his farm where police raided. Police called him to his farm boundary and said to sign the panchnama, so he signed it. He did not go anywhere with the police. In his presence, police took away two-three people. Police caught these people in his presence. Police caught these people from a house on his farm boundary. When they were caught, he was also near this house and other villagers had gathered. Among those caught was Mariyamben; he does not know the others' names. The witness identifies Mariyamben and Accused Rajubhai sitting with her in Court. Showing panchnama Exh-25, he identifies his signature on every page.

Cross-Examination: In cross-examination for Accused No. 1 & 4, he admitted that Mariyamben's land and his land share a

boundary. Suits are going on against Mariyamben regarding the land boundary. Mariyamben has filed a case against him regarding breaking locks of her house, which is currently ongoing. While standing at the farm boundary, police made a writing and asked him to sign, so he signed. Police did not read the writing to him. The place where panchnama was done is his own land. When he went there, police were writing the panchnama. He answered other questions in the negative. Accused No. 2 adopted the cross-examination done for Accused No. 1 & 4.

Cross-Examination for Accused No. 3: Leading question: "How many women and men were caught with police?" Answer: One man and two women. He admitted he did not see anyone else. Question: "How many people gathered when you signed?" Answer: 60-70 people. Other questions answered in negative.

In this case, the prosecution examined Panch Witness **Nileshbhai Umashankarbhai Bhatt at Exh-32**. He stated in examination-in-chief that on 28/06/2018, police called him as a panch at Nawabandar Marine Police Station. This incident was of Kob village. It happened around 10-11 at night on 28/06/2018. Does not remember exact time. Police raided when Mariyamben was conducting body trade in a Wadi outside his village. Villagers were also with them. A lady was locked in a cupboard, and upon opening it, he saw her. A man Rajubhai, who was from outside, was also present. Showing panchnama Exh-25, he identifies his signature. Subsequently, as the witness did not support the facts of the panchnama, Ld. APP declared him hostile. In cross-examination by APP, he admitted that police explained the tip-off

at the PS and made a preliminary panchnama. Then police went to raid at Mariyamben's place. Mariyamben was present there.

Cross-Examination: In cross-examination for Accused No. 1 & 4, he admitted police called him to the police station. Police asked him to sign a prepared writing, so he signed. He knows Mariyamben and Safibhai from before as they are from Kob. Police had written the writing beforehand and asked him to sign later. Police did not read the writing to him. Accused No. 2 & 3 adopted the cross-examination.

In this case, the prosecution examined IO **Samirbhai Ishakbhai Mandhara at Exh-37**. He stated in examination-in-chief that from 2018 to 2020 he served as PSI at Nawabandar Marine PS. On 28/06/2018 he received a tip-off that Mariyamben w/o Safibhai living near the poultry farm on Chikhli road, Kob village, calls women and customers to her house for body trade and runs a brothel. He verified it through staff. Finding it true, he informed Dy.SP J.N. Chavda. He came for the raid. He went to Tad T-junction with staff HC Shantilal, PC Nanjibhai, Ravibhai, Govindbhai, WPC Hetalben, and Bhavnaben. Dy.SP was present there. Calling two panchas and explaining the raid, they went in a government vehicle to the spot. There was a tiled house. A woman sitting in the veranda stated her name as Mariyamben w/o Safibhai. In a room, a woman and man were found in an awkward (objectionable) condition. The man stated his name as Rajubhai Devayatbhai and the woman as Jahanara w/o Rafiqur, Res. Kolkata. Mobiles were seized from both as per panchnama. Cash Rs. 1500 found from body search of Mariyamben was seized.

Thus, finding customer Rajubhai and victim Jahanara called from outside during the raid in the brothel run by Mariyamben in her home, a panchnama was drawn under Immoral Traffic Prevention Act 1956. Dy.SP instructed to register a complaint, so he gave a complaint against the accused (Exh-26). He identifies signatures. He named panchas Nilesh and another (doesn't remember name) in the complaint. Then investigation order (Exh-38) was given to him by PSO. He took statements of witnesses. Took statement of the victim found during raid. During interrogation of arrested accused Mariyamben, she stated victim was sent by Munno alias Harishbhai living in Ahmedabad and her husband calls customers. Sending staff to Ahmedabad to the address given by the victim, it was found she is originally Bangladeshi and her visa in the passport had expired, so a separate crime was registered. Accused Munno alias Haresh and Safibhai were arrested and sent to court. Medical exam of victim was done and statement u/s 164 CrPC was taken. He collected papers relevant to the crime and attached them with chargesheet. Then finding sufficient evidence, he filed chargesheet. Passport copy of victim produced at Exh-39. He can identify the seized mobiles and cash if shown. **Cross-Examination:** In cross-examination for Accused No. 1, he admitted that he is the complainant and he is the investigator. Jahanara knew Bangladeshi language, not Gujarati. He did not state the government vehicle number/type in the complaint. In his complaint, victim Jahanara stated she is a resident of Kolkata. It was revealed in his investigation that the victim came from Bangladesh on a 3-month tourist visa. He did not file any

complaint against the victim for first giving a false address and then the correct one. He did not inform superiors about the false address. He knows well as an IO that the victim is a non-Indian. If a non-Indian stays without permission, steps are to be taken by them or superiors. He made no note under the victim's statement that it was read over to her in Bangladeshi or a language she understands. He did not seize clothes or condoms or undergarments from the spot. He did not take the victim's statement in front of a female social worker or female police employee . He seized no Mudamal from the spot in front of panchas. He was present during the raid. He took statements of only his staff and not independent witnesses. There is a Wadi area around the spot. There are houses there. He did not take the statement of Hasanbhai Jumabhai Mansuri. He did not investigate who the Bangladeshi girl was who came in contact with Accused Munno. Body search panchnama was not done in the presence of female panchas. Other questions answered in negative. Accused No. 1 & 4 adopted cross-examination done for Accused No. 2.

Cross-Examination for Accused No. 3: He admitted Accused No. 3's description is not in the complaint. No arrest panchnama of Accused No. 3 is in his presence. Complaint under Foreigners Act is to be filed where the person resided. He filed a complaint against the victim at Nawabandar. No complaint was filed in Ahmedabad where the victim stayed. It is not that the place of incident is owned by Accused No. 3 or he was present there. He obtained no proof of ownership of the place during investigation.

9. IMMORAL TRAFFIC (PREVENTION) ACT, 1956

SECTION 3 : Punishment for keeping a brothel or allowing premises to be used as a brothel

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who-

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

20[(2A) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause

(a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if, -

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person].

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of subsection (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

SECTION 5 : Procuring, inducing or taking person for the sake of prostitution

(1) Any person who-

(a) procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution; or

(b) induces a [person] to go from any place, with the intent that he/she may, for the purpose of prostitution, become the inmate of or frequent, a brothel; or

(c) takes or attempts to take a [person], or causes a [person] to be taken, from one place to another with a view to his/her carrying or being brought up to carry on prostitution; or

(d) causes or induces a [person] to carry on prostitution; [shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section-

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years].

[***]

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

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

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

10. IN THE HIGH COURT OF KERALA AT ERNAKULAMSENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA FRIDAY, THE 27TH DAY OF NOVEMBER 2020 / 6TH AGRAHAYANA, 1942 CrI.MC.No.2539 OF 2014

The Kerala High Court has made it clear that any investigation or arrest under the Immoral Traffic (Prevention) Act, 1956 has to be conducted only by a Special Police Officer authorized in that behalf. It has been held that there is no provision in the Act that empowers such Special officer to authorise the investigation of the case to be conducted by any other Police officer. The observation is made by a Bench of Justice MR Anitha in an application for quashing of FIR filed by a lodge owner, who was booked under the Act. As per the facts of the case, Circle Inspector of Police, Perinthalmanna conducted a search in the lodge run by the Petitioner and found that the accused No. 2 to 7 were inside the lodge rooms engaged in prostitution for money. The accused were arrested and a case was registered. Thereafter, Circle Inspector, Pandikkad conducted the investigation, questioned the witnesses and filed charge under Secs 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act. According to the petitioner, under the provisions of the Act, arrest and investigation has to be conducted by a

Special Police Officer as provided under Section 2(i) and 13 of the Act. [Section 13 states: There shall be for such area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.]

In this case, he pointed out, the investigation was conducted by Circle Inspector, Pandikkad whereas the place of occurrence of the alleged incident was within the jurisdiction of Perinthalmanna police station. It was also his contention that there is no provision under the Act to empower the special police officer to authorise investigation of the case to be conducted by any other officer. Finding merit in this submission, the High Court held, "Section 14(ii) does not empower the Special Police Officer i.e. Inspector of Police, Perinthalmanna to authorise the investigation of the case to be conducted by the Police Inspector, Pandikkad. So the investigation conducted by the Inspector of Police, Pandikkad who is not the Special Police Officer is not in compliance with the provisions of law. So as rightly contended by the learned counsel, the criminal prosecution initiated against the petitioner based on the final report filed by the Circle Inspector, Pandikkad is not sustainable in law." [Section 14(ii) states: when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order

and, on being required by such person, show him the order.] Reliance was placed on *Joseph v. State of Kerala*, 2011 (2) KHC 958, whereby while dealing with Sections 3, 4, 5, 14 (ii) of the Act, the High Court had held that authorisation given by the Special Police Officer to his subordinate officer must mention the name of any of the persons to be arrested. It is also held that Special Police Officer cannot authorise investigation of the case to be conducted by any other officer. The Court observed that the Government of Kerala has appointed Circle Inspector of Police attached to the police stations in the State as Special Police Officers for dealing with offences under the Act within their respective area of jurisdiction. Perinthalmanna and Pandikkad have been given under the separate jurisdictional limits and that would in turn indicate that Circle Inspector of Police, Perinthalmanna would be Special Police Officer within the jurisdiction of Perinthalmanna circle and the Circle Inspector of Police, Pandikkad would be the Special Police Officer within the Pandikkad circle. In this backdrop the Bench quashed the FIR and criminal proceedings, and observed, "Circle Inspector of Police, Pandikkad will not be the Special Police Officer with respect to a crime committed within the jurisdictional limits of Perinthalmanna circle. So, in view of the settled position of law, the final report filed by the Inspector of Police, Pandikkad who is not the Special Police Officer empowered under Section 13 of the Act is not in compliance with the provisions of the Act and hence is not sustainable in law."

11. GUJARAT HIGH COURT Hon'ble Judges: Divyesh A.Joshi Hemantkumar Mohanbhai Bhalodi Versus State Of Gujarat Criminal Miscellaneous Application No. 9216 of 2018 ; Decided on:- 30-08-2024

CODE OF CRIMINAL PROCEDURE, 1973 Section - 482
 IMMORAL TRAFFIC (PREVENTION) ACT, 1956 Section - 3, 4, 5, 6 (a) Code of Criminal Procedure, 1973 - S. 482 - inherent powers - Immoral Trac (Prevention) Act, 1956 - S. 3, 4, 5, 6 - application for quashing FIR and pending criminal case against applicants as customers of a brothel - applicants contended that they were merely customers and not involved in running or managing the brothel - Held that prosecution under Sections 3 to 6 of the Act is not maintainable against customers of a brothel as these sections do not impose penalties on customers - allegations did not establish involvement in management or control of the premises by applicants - FIR and subsequent criminal proceedings quashed. (Paras 2, 10, 16)

(b) Immoral Traffic (Prevention) Act, 1956 - S. 3, 4, 5, 6 - interpretation of provisions regarding liability of customers in brothel operations - legal position established through prior judgments - Held that consistent judicial interpretation indicates that customers cannot be prosecuted under the specified sections as they do not fall within the ambit of offences defined therein - legislative amendment suggested to address potential gaps in penal provisions concerning customers. (Paras 8, 12)

(c) Code of Criminal Procedure, 1973 - S. 482 - exercise of inherent powers to quash FIR and criminal proceedings based on

lack of evidence against applicants - Held that if an FIR fails to disclose any commission of offence against an applicant without any additional evidence or modification in recitals, it justifies quashing the FIR and chargesheet - application allowed with all consequential proceedings terminated. (Paras 15, 13)

12.GUJARAT HIGH COURT Hon'ble Judges: J.B.Pardiwala Vinod @ Vijay Bhagubhai Patel Versus State Of Gujarat Criminal Miscellaneous Application No. 8156 of 2017 ;Decided

on:- 05-05-2017 Criminal Law - Code of Criminal Procedure, 1973 - S. 482 - Immoral Traffic (Prevention) Act, 1956 - S. 3, 4 and 5 - Indian Penal Code, 1860 - S. 114, 370 - question as to applicability of S. 370 of IPC - term "exploitation" - distinction between preparation to commit a crime and an attempt to commit - applicant was one of the customers who was found at a brothel house at the time of raid - prayer for quashing of complaint - held, applicant being a customer cannot be prosecuted under the provisions of Immoral Traffic (Prevention) Act, 1956 as applicant has not procured a woman for the purposes of prostitution - object of S. 370 of IPC is to prevent sexual exploitation of girl or woman - consent of the victim is not material in determination of the offence of traffic - exploitation includes physical exploitation or any form of sexual exploitation - S. 370 of IPC cannot be applied where the sex workers engaged in prostitution of their own volition and not pursuant to any inducement, force or coercion - subject matter of investigation whether sex worker was forced to engage into prostitution or not - contention of the accused that he was arrested just before commission of crime - case of

Abhayanand Mishra (Supra) relied on - complaint qua u/s 3, 4 and 5 of Immoral Traffic (Prevention) Act quashed - liberty given to Investigating Officer to carry out investigation in connection of offence punishable u/s 370 of IPC - application partly allowed.

13.Contradictions and Omissions

Upon overall appreciation of the evidence on record, this Court finds that the prosecution case suffers from material contradictions and omissions which go to the root of the matter and materially affect its reliability. The star witness, PW–Jahanara Begum, made significant improvements in her deposition before the Court. She alleged that she was locked inside a cupboard, that she was forced into prostitution three times on the very first day, and that accused No.1 took the entire money earned from such acts. However, these facts were not stated in her police statement recorded under Section 161 Cr.P.C. These omissions are not minor discrepancies but material improvements touching the core allegation of coercion and commercial exploitation. In criminal jurisprudence, such improvements render the testimony doubtful unless satisfactorily explained, which is not the case here. Further, she admitted during cross-examination that she travelled from Ahmedabad to Una of her own will. She initially provided a false address and later admitted being a Bangladeshi national. She also conceded that proceedings under the Foreigners Act were initiated against her. These circumstances create doubt regarding her credibility and raise the possibility of motive to implicate the accused. As regards the police witnesses, though they consistently stated that accused No.2 and the victim were found in a semi-

naked condition, no detailed description of clothing was recorded in the panchnama or statements. The vehicle number used for the raid and driver details were not recorded. No independent neighbour or local witness was examined despite the premises being situated on a public road. These procedural lapses weaken the prosecution version. The prosecution has also failed to establish the commercial element essential for offences under Sections 3 and 5 of the Immoral Traffic (Prevention) Act. No marked currency was used. The seized amount of ₹1,500/- is not conclusively proved to be proceeds of prostitution. No evidence shows that accused No.2 paid any money. No call data records or electronic evidence were produced despite seizure of mobile phones. Accused No.3 was admittedly not present at the spot, and the allegation of procuring rests solely on the uncorroborated and improved testimony of the victim. Additionally, no documentary evidence has been produced to show compliance with Section 13 of the Act regarding appointment of Special Police Officer. The complainant himself conducted the investigation, which further raises doubt regarding impartiality. Thus, the cumulative effect of material omissions in the victim's testimony, absence of independent corroboration, procedural irregularities, and failure to prove essential ingredients of the offence creates serious doubt in the prosecution case. In such circumstances, the accused are entitled to benefit of doubt.

14. Lacunae in the Prosecution Case

Upon careful scrutiny of the entire evidence on record, the following material lacunae and deficiencies are apparent in the prosecution case:

1. Absence of Proof of Habitual Use of Premises as Brothel

Section 3 of the Immoral Traffic (Prevention) Act requires proof that the premises was being used as a brothel. Except for a single raid on 28/06/2018, there is no evidence to show continuous or habitual use of the house for prostitution. No neighbour, local resident, or independent witness has been examined to establish regular immoral activity.

2. No Independent Corroboration

3. The prosecution case rests primarily on police witnesses and the victim. No independent panch witness or neighbour has supported the allegation of brothel activity. In cases of this nature, while independent witnesses may be difficult, total absence of corroboration weakens the prosecution case.

4. Material Omissions in Victim's Testimony

The star witness made significant improvements before the Court: Allegation of being locked in a cupboard. Allegation of being forced into prostitution three times on the first day. Allegation that accused No.1 took all the money. These facts were not stated in her police statement and amount to material omissions affecting her credibility.

5. No Proof of Commercial Transaction

No marked currency was recovered. The seized amount of

₹1,500/- is not proved to be proceeds of prostitution. There is no evidence that accused No.2 paid money for sexual services. Mere presence in a semi-naked condition does not establish commercial sexual exploitation.

6. No Evidence Against Accused No.3 at the Spot

Accused No.3 was admittedly not present during the raid. The allegation of procuring rests solely on the uncorroborated testimony of the victim without any independent evidence of inducement or transportation for prostitution.

7. Customer Not Liable Under Sections 3–6

As per settled judicial interpretation, mere customers cannot be prosecuted under Sections 3 to 6 of the Act unless involvement in management or procurement is proved. No such evidence exists against accused No.2.

8. Investigation Conducted by Complainant Himself

The complainant acted as Investigating Officer, raising doubt about impartiality. Further, no documentary proof of appointment as Special Police Officer under Section 13 of the Act is produced, creating legal infirmity.

9. Procedural Irregularities

- Vehicle number and driver details not recorded. No detailed description of clothing in panchnama. No scientific or forensic evidence collected. No call data records or electronic evidence examined despite seizure of mobile phones.

10.Credibility Issues of the Victim The victim admitted: She came to Una of her own will. She initially provided false address. She is facing proceedings under the Foreigners Act. These aspects create doubt regarding motive and reliability.

11.Failure to Establish Coercion or Inducement
The prosecution has not proved force, coercion, inducement, or exploitation beyond reasonable doubt as required under Section 5.

15.Consolidated Finding

Upon re-appreciation of the entire oral and documentary evidence, this Court finds that the prosecution has failed to establish the essential ingredients of Sections 3 and 5 of the Immoral Traffic (Prevention) Act beyond reasonable doubt.

At the outset, to attract Section 3 of the Act, the prosecution must prove that the premises was habitually used as a brothel and that the accused kept, managed, assisted in management, or knowingly allowed the same to be used as such. In the present case, except for the single raid dated 28/06/2018, there is no evidence on record to show habitual or continuous use of the premises for prostitution. No prior complaint, no surveillance record, no statement of neighbours, and no documentary or electronic material have been produced to establish that the house of accused No.1 was being regularly used as a brothel. The prosecution has not invoked or proved the statutory presumption under Section 3(2A) by producing any publication or notice as contemplated therein.

The prosecution relies heavily upon the fact that accused No.2 and the victim were found in a semi-naked condition in a room. However, it is settled that mere presence of a man and woman in such condition does not automatically prove commercial sexual exploitation. There must be clear proof that the act was for consideration and that the premises was being used as a brothel. No marked currency was recovered. The amount of ₹1,500/- seized is not proved to be proceeds of prostitution. There is no evidence that the said amount was received from accused No.2. No independent witness has stated that money was exchanged.

The testimony of PW-Jahanara Begum, though important, suffers from material omissions and improvements. She admitted in cross-examination that she had not stated before the police that she was locked in a cupboard or that she was forced into prostitution three times on the very first day. She also did not state in her police statement that accused No.1 took the entire money. These omissions are not minor contradictions but go to the root of the allegation of coercion and commercial exploitation. Further, she admitted that she came from Ahmedabad to Una of her own will. She is facing proceedings under the Foreigners Act and initially gave a false address. These aspects create doubt regarding her credibility and motive.

So far as accused No.2 is concerned, the evidence only establishes his presence at the spot. There is no material to show that he was keeping, managing, assisting, or allowing the premises to be used as a brothel. As consistently interpreted by the Gujarat High Court, customers cannot be prosecuted under Sections 3 to 6 of the Act

unless there is specific evidence of management, procurement, or control. In absence of such evidence, prosecution against accused No.2 under the said provisions is not legally sustainable.

Regarding accused No.3, admittedly he was not present at the time of raid. The allegation that he procured the victim is based solely on the uncorroborated testimony of the victim. No independent witness or documentary evidence supports the claim that he induced or transported her for the purpose of prostitution. Thus, the essential ingredients of Section 5 are not proved beyond reasonable doubt.

Another important aspect is the legality of investigation. Section 13 of the Act mandates appointment of a Special Police Officer for dealing with offences under the Act. The defence has raised a contention that the complainant himself conducted the investigation and there is no material placed on record to show that he was duly appointed as Special Police Officer for the notified area. The prosecution has not produced any notification or document to establish compliance with Section 13. In light of judicial precedents, investigation conducted by an officer not duly empowered under the Act creates serious infirmity.

Further, no scientific or medical evidence conclusively establishes commission of prostitution. No evidence is produced to show inducement, threat, force, or coercion as required under Section 5. The prosecution has not established that the victim was compelled against her will at the relevant time.

Criminal law requires strict proof. Suspicion, however strong, cannot take the place of proof. The cumulative effect of material omissions, absence of independent corroboration, lack of proof of commercial transaction, non-proof of habitual use of premises, absence of evidence against accused No.3, non-applicability of provisions against accused No.2 as mere customer, and legal infirmity regarding investigation, creates reasonable doubt in the prosecution case.

Accordingly, this Court holds that the prosecution has failed to prove the charges under Sections 3 and 5 of the Immoral Traffic (Prevention) Act against the accused persons beyond reasonable doubt. The accused are therefore entitled to benefit of doubt.

Operative Order

In view of the foregoing discussion, findings, and reasons recorded hereinabove, this Court holds that the prosecution has failed to prove beyond reasonable doubt that accused No.1 **Mariamben w/o Safibhai Mansuri**, accused No.2 **Rajubhai Devatbhai Lakhanotra**, and accused No.3 **Muno alias Harishbhai Lambodar Giri** committed offences punishable under Sections 3(1), 5(1)(A), 5(1)(B) and 5(1)(D) of the Immoral Traffic (Prevention) Act, 1956.

Accordingly, in exercise of powers under Section 248(1) of the Code of Criminal Procedure, the aforesaid accused persons are hereby **acquitted** of the charges levelled against them in Criminal Case No. 767/2019.

The bail bonds of the accused shall stand cancelled. However, in compliance with Section 437A of the Code of Criminal Procedure, each of the accused shall execute a fresh personal bond in the sum of ₹10,000/- with one surety of like amount to appear before the higher Court, if and when required, within the prescribed period.

Muddamal articles, if any, shall be dealt with as per law after expiry of appeal period.

Proceedings against accused No.4 **Safibhai Daudbhai Mansuri** have already been ordered to be abated vide order below Exhibit 53 dated 21/04/2025 due to his death.

The case stands disposed of accordingly.

Pronounced in open Court on this 09/04/2026.

(Jayesh Kumar Khant)

Additional Chief Judicial Magistrate

Una, District Gir Somnath

JUDGE CODE NO.: GJ01086