

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

CRL.MC.NO. 7778 OF 2015 ()

(AGAINST THE PROCEEDING IN F.I.R. NO. 653/2015 OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT-II, NEYYATTINKARA)

PETITIONER(S)/ACCUSED 5,6,7:

1. VIJAYAKUMAR, AGED 56 YEARS,
S/O.NEELAKANDA PILLAI, H/3, CHETTIKULAM-82,
NAGARCOVIL, KANYAKUMARI DISTRICT.
2. MANIKYAVASAKAM, AGED 54 YEARS,
S/O.CHIDAMBARAKUMAR, 67, KOTTAR CHETTY STREET,
NAGARCOVIL, KANYAKUMARI DISTRICT.
3. MARTIN AROGYASWAMI, AGED 52 YEARS,
S/O.CHINNAPPA, DOOR NO.-B/14, MAHARAJA NAGAR,
THENDRAL NAGAR, PALAYAM KOTTAI, THIRUNELVELI DISTRICT.

BY ADVS.SRI.M.BALAGOVINDAN
SRI.S.SHIBU KUMAR

RESPONDENT(S)/STATE AND COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY STATE PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.682 031
2. INSPECTOR OF POLICE
OFFICE OF THE INSPECTOR OF POLICE, POZHIYOOR,
PARASSALA CIRCLE, TRIVANDRUM DISTRICT.`695 001

BY PUBLIC PROSECUTOR, SMT. P. MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
23-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.MC.NO. 7778 OF 2015 ()

APPENDIX

PETITIONER(S) EXHIBITS :

ANNEXURE A- ATTESTED COPY OF THE 653/2015 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, NEYYATTINKARA DATED 19.09.2015.

ANNEXURE B- ATTESTED COPY OF THE REPORT SUBMITTED BY THE 2ND
RESPONDENT.

EXHIBIT C- ATTESTED COPY OF THE REMAND APPLICATION FILED BY THE 2ND
RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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Crl.M.C. No. 7778 of 2015

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Dated this the 23rd day of December, 2015

ORDER

The petitioners are accused Nos. 5, 6 and 7 in Crime No. 653/ 2015 of Pozhiyoor Police Station, on the files of Judicial First Class Magistrate Court-II, Neyyattinkara.

2. The 2nd respondent registered the above crime against the petitioners and others under Immoral Traffic (Prevention) Act, 1956(*hereinafter referred to as 'the Act'*), alleging the commission of offences punishable under Section 3, 4(1), 5 and 7 of the said Act.

3. According to prosecution, the accused No. 1 with the assistance of accused No. 2 has been

conducting a home stay and on 19.09.2015, Sub Inspector of Parasala Police Station has conducted a raid in the said home stay and at that time, the petitioners were found there in a room along with two ladies and they were taken into custody and registered the said crime. According to the petitioners, they have not committed any of the offences either under the Act or any other Act, even according to the First Information Report, filed before the Judicial First Class Magistrate Court. Therefore, neither any investigation can be made nor any charge can be levelled against the petitioners under any of offences provided under the Act, on the basis of the said First Information Report registered against them, even if, the allegations against them are accepted, as such. On the above ground, the petitioners filed this Criminal

Miscellaneous Case, for quashing the prosecution proceedings against petitioners under Annexure -A, First Information Report.

4. Heard the learned counsel for the petitioners and learned Public Prosecutor.

5. Learned counsel for the petitioner drew my attention to the allegation in the Annexure-A, First Information Report and contends even if, the prosecution allegations in the First Information Report are true and correct, no offence under the Act can be alleged against the petitioners.

6. *Per contra*, learned Public Prosecutor submits that the investigation is not completed and at this stage Annexure -A, First Information Report cannot be quashed, invoking jurisdiction under Section 482 of the Code of Criminal Procedure.

7. Going by Annexure -A, First Information

Report, as rightly submitted by the learned counsel for the petitioner, the allegation against the petitioners is that they were found along with two ladies in a room of home stay, conducted by accused Nos. 1 and 2. It is also alleged that the first accused has collected Rs.500/- each from the petitioners. The offences alleged against the petitioners are under Section 3, 4(1), 5 and 7 of the said Act.

8. Section 3 deals with the punishment for keeping a brothel or allowing premises to be used, as a brothel and Section 4 deals with the punishment for living on the earnings of prostitution and Section 5 deals with procuring, inducing or taking person for the sake of prostitution and Section 7 deals with the prostitution in or in the vicinity of public place. On an analysis of the allegation

against the petitioners in Annexure-A, First Information Report, it is seen that even if, the allegation against the petitioners are admitted at its entirety and taken at its face value, none of the accused have committed any of the offences under Sections 3, 4(1), 5 and 7 of the Act. Put it differently, engaging in sexual activity even in brothel is not made an offence punishable under the Act. If the allegations in the First Information Report taken at its face value and accepted at its entirety, that does not constitute the offence alleged against the accused, I have no hesitation to hold that all further prosecution proceedings against the accused under such First Information Report would amount to an abuse of the process of the court and are liable to be quashed, invoking the jurisdiction under Section 482 of the Code of

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Criminal Procedure and I do so.

9. In the result, all prosecution proceedings against the petitioners under Annexure -A, First Information Report will stand quashed.

This Crl.M.C. is allowed accordingly.

Sd/-

K. HARILAL,
JUDGE

DST

//True copy//

P.A. To Judge