

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2601 of 2015

ORDER:

This petition is laid under Section 482 of the Code of Criminal Procedure, 1973 for quashing the charge sheet in Sessions Case No.127 of 2015 on the file of Principal Assistant Sessions Judge at Karimnagar, on the ground that the petitioner/accused No.2 can only be construed as a customer and when no offence is provided by the provisions of Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short, 'the Act').

2. Heard Sri M.Ram Mohan Reddy, learned counsel for the petitioner/accused No.2, and the learned Additional Public Prosecutor for the State.

3. Turning to the facts, on available information about organizing of prostitution, in the house of Kolupula Laxmi Narayana at Rekurthy village, by accused No.1-Sujatha, the said house was surprised by the investigating officer, who found victims and a male customer, the petitioner herein, and, on completion of investigation, charge sheet was laid against six accused, amongst whom, the petitioner herein was arraigned as accused No.2. The allegations levelled against them, as seen from the charge sheet, indicate that while accused No.1 was organising the prostitution with the help of accused Nos.3 and 4, who were procuring the persons from various places, the petitioner herein (accused No.2) and the accused Nos.5 and 6 did visit the house of accused No.1 and alleged to have participated in sexual intercourse with the victims. During which time, they were apprehended, and, thus, it is clear that the petitioner is a customer.

4. Learned counsel for the petitioner/accused No.2 while contending that the petitioner has not committed any offence as the offences levelled against the accused are punishable under Sections 3, 4 and 5 of the Act, placed reliance on the decision of this Court in **Mohammed Shaheed v. State of Telangana**^[1] to fortify his stand. In similar situation, this Court held that the proceedings against the customers cannot be invoked for prosecuting them. Relevant observations contained in paragraph-5, since this Court placed reliance on the earlier decisions of this Court read thus:

"I find force in the submission of petitioner. Section 3 of the Act deals with punishment for keeping a brothel or allowing premises to be used as a brothel. Section 4 of the Act deals with punishment for living on the earnings of the prostitution. Whereas Section 5 of the Act deals with procuring, inducing or taking persons for the sake of prostitution. Obviously, the allegation against the petitioner/A.5 is not that of either running brothel house or procuring women for the purpose of prostitution or that he is living by earning money on prostitution. He was booked along with other accused only as a customer of the flesh trade. Therefore Sections 3 to 5 are not applicable to him. It is interesting to note that none of the other penal provisions in the Act either describe him as an offender. Therefore, there is any amount of force in the submission of learned counsel for the petitioner that a customer to the flesh trade cannot be treated as an offender under the Act. This aspect is no more *res integra* and we are fortified by atleast two judgments of this High Court, viz., Goenka Sajan Kumar vs. The State of A.P. 2014 (2) ALD (Cri) 264 and Z.Lourdiah Naidu vs. State of Andhra Pradesh 2013 (2) ALD (Cri) 393. In these two cases, the petitioners were admittedly the customers to a brothel house. Consequently, the proceedings against them were quashed holding that the provisions of the Act cannot be invoked for prosecuting them."

5. Learned Additional Public Prosecutor concedes that the petitioner/accused No.2 is a customer.

6. When the petitioner/accused No.2 is a customer, certainly, in view of the aforementioned decision, the provisions of the Act cannot be invoked against him for prosecuting him, and, accordingly, the instant criminal petition is allowed quashing the proceedings against the petitioner/accused No.2 in Sessions Case No.127 of 2015 on the file of Principal Assistant Sessions Judge at Karimnagar.

7. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

A. SHANKAR NARAYANA, J

07th April, 2015

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