

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.467 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A.3 seeks quashment of the proceedings in C.C.No.673 of 2014 on the file of learned IV Metropolitan Magistrate, at Bheemunipatnam, Visakhapatnam District.

2) The petitioner/Accused No.3 along with A.1, A.2 and A.4 is accused of committing offences under Sec.3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 (for short "the Act"). On the evening of 22.09.2014, the Police of Pothinamallayyapalem P.S, Visakhapatnam raided the house bearing Door No.5-14/10, NGGO's Colony, Madhurawada, Visakhapatnam and found the said premises being used for prostitution. A.1 and A.2 were said to be the brothel house organizers, A.4 was the pimps whereas A.3 is the customer. The police registered crime and investigating the matter.

3) Learned counsel for petitioner would submit that none of the Sections 3, 4 and 5 or other sections of the Act describe a customer as offender and therefore, the prosecution of the petitioner/A.3 is abuse of process of law and hence the proceedings against him may be quashed.

4) Learned Public Prosecutor contended A3 is a co-accused and liable for prosecution.

5) 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.3 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 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.***^[1] and ***Z. Lourdiah Naidu vs. State of Andhra Pradesh***^[2]. 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.

6) Having regard to the facts and above precedential jurisprudence on the subject in issue, it is clear that the criminal proceedings against the petitioner would amount to abuse of process of law.

7) In the result, this Criminal Petition is allowed quashing the proceedings against petitioner/A.3 in C.C.No.673 of 2014 on the file of learned IV Metropolitan Magistrate, at Bheemunipatnam, Visakhapatnam District.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 05.02.2015
SCS

[\[1\]](#) 2014(2)ALD(Cri)264

[\[2\]](#) 2013(2)ALD(Cri)393