

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition No.3158 of 2015

%28.04.2015

Between:

S.Naveen Kumar @ Naveen. Petitioner/A.3

AND

The State of Telangana,

Rep. by Public Prosecutor,

High Court, Hyderabad. Respondent

! Counsel for Petitioner : Sri D.Madhava Rao

^ Counsel for Respondent : Addl. Public Prosecutor

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> Head Note:

? Cases referred:

1) 2014 (2) ALD (Cri) 264

2) 2013 (2) ALD (Cri) 393

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.3158 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A3 seeks to quash the proceedings in PRCNo.103 of 2014 on the file of II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad.

2) The police of KPHB PS registered FIR No.985 of 2014 with the allegation that on 20.09.2014 at about 21.30 hours on credible

information that an organized prostitution is going on in Flat No.104, Prasanna Apartment, Bhagyanagar Colony, KPHB, Cyberabad and on obtaining permission from ACP, Kukatpally Division proceeded to Flat No.104 with the staff and witnesses and on search found two ladies and one person and on their confession came to know that A1 (absconding) was running the brothel house in the said premises and A2 is looking after the maintenance of the same on the instructions of A1 and A1 brought victim lady (LW1) and recruited her for prostitution and A1 sent A3—customer and A2 took Rs.2,500/- and showed the victim. At that time the police caught them and brought to the police station and after investigation the SI of Police, KPHB PS laid charge sheet against A1 and A2 for the offence under Section 370A IPC and Sections 3, 4, 5 and 6 of Immoral Traffic (Prevention) Act, 1956 (for short “PIT Act”) and against A3 under Section 4 of PIT Act. The Committal Magistrate accordingly took cognizance of the offence.

Hence the instant petition.

3) Denying the allegations, learned counsel for petitioner/A3 argued that assuming that charge sheet allegations are true, still they would reveal that petitioner/A3 is only a customer and not an organizer of brothel house or pimp and therefore, charge under Section 4 of PIT Act is not applicable to him, since the said section relates to the person who lives on the earnings of the prostitution. He thus prayed to quash the proceedings.

4) Opposing the petition, learned Public Prosecutor argued that though charge under Section 4 of PIT Act is not maintainable, still petitioner/A3 is liable for charge under Section 370A IPC. He thus prayed to dismiss the petition.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6 a) **POINT:** Admittedly, petitioner/A3 is a customer in the flesh trade. He was charge sheeted for the offence under Section 4 of PIT Act. Section 4 reads thus:

“Section 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 any other person 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 both²[and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

(2) Where any person over the age of eighteen years 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)”

As rightly argued, Section 4 basically deals with the persons who lives on the earnings of the prostitution. Therefore, there is any amount of force in the submission of learned counsel for petitioner that a customer to flesh trade cannot be treated as offender under Section 4 of PIT Act. This aspect was no more *res integra* since atleast two judgments of this High Court i.e. **Goenka Sajan Kumar vs. The State of A.P.** and **Z. Lourdiah Naidu vs. State of Andhra Pradesh** establish the same. Therefore, criminal proceedings against the petitioner/A3 for the offence under Section 4 of PIT Act are no doubt liable to be quashed.

b) However, that is not end of the matter. A perusal of the charge sheet would show that the police while charge sheeting A1 and A2 for the offences under Sections 3, 4, 5 and 6 of PIT Act and under Section 370A IPC, surprisingly charge sheeted petitioner/A3 only under Section 4 of PIT Act, but not under Section 370A IPC.

Section 370A IPC reads thus:

“Section 370A - Exploitation of a trafficked person

(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.”

c) The phraseology *“engages such minor/such person for sexual exploitation in any manner”* employed in sub-sections (1) and (2) of Section 370A IPC in clear terms indicates that the flesh customer who hires the victim woman for sexual exploitation also falls within the fold of Section 370A as an offender.

d) It shall be noted that in the wake of gang rape of Nirbhaya in Delhi which arose an unprecedented public furore, Government considered it fit to drastically amend several provisions of IPC and in that direction appointed a Committee under the Chairmanship of late Justice J.S.Verma, the former Chief Justice of India. The Committee after interacting cross sections of stake holders submitted its detailed report suggesting amendments and introduction of various provisions in penal laws like IPC, Cr.P.C., Evidence Act etc. Consequent upon the said report sub-clause (2) of Section 370 IPC was amended and Section 370A IPC was introduced. Having regard to the avowed object with which report was submitted and amendments and new provisions were introduced in several acts, it cannot be presumed for the moment that Legislators considered customer as an innocent victim in the flesh trade. Therefore, Section 370A takes in its fold the customer also. So, despite the police charge sheeting petitioner/A3 only for the offence under Section 4 of PIT Act and the Committal Court accepting the same, it is evident from the charge sheet that the petitioner/A3 is *prima facie* liable for charge under Section 370A

though not under Section 4 of PIT Act with which he was charge sheeted.

7) Now, the crucial question is whether the High Court in its inherent power under Section 482 Cr.P.C. while quashing the proceedings against the petitioner/A3 for the offence under Section 4 of PIT Act can direct the Committal Court to take cognizance of offence under section 370A IPC against him.

a) In my considered view, to secure the ends of justice, the High Court can exercise its inherent power to give such direction when the material placed by the prosecution i.e. charge sheet discloses the commission of offence under Section 370A IPC.

8) In the result, while quashing the proceedings in PRC No.103 of 2014 on the file of II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad under Section 4 of PIT Act against the petitioner/A3, learned Committal Magistrate is directed to take cognizance under Section 370A IPC against the petitioner/A3.

9) This Criminal Petition is accordingly disposed of.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

The Registrar (Judicial) is directed to forward copy of this order to D.G.Ps of Andhra Pradesh and Telangana to circulate to all the Police Stations.

U. DURGA PRASAD RAO, J

Date: 28.04.2015

Note: L.R. copy to be marked: Yes / No

Murthy

