

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.823 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A.2 seeks quashment of the proceedings in C.C.No.185 of 2013 on the file of learned Judicial First Class Magistrate-cum-Excise Court at Erramanjil, Hyderabad.

2) The petitioner/Accused No.2 along with A.1 and A.2 is accused of committing offences under Sec.3, 4, 5 and 7 of Immoral Traffic (Prevention) Act, 1956 (for short "the Act"). On the night of 04.03.2013, the Police of S.R Nagar P.S, Hyderabad raided the premises Room No.401, Hotel Sri Krishna Residency Hotel, Opp: SR Nagar Community Hall, S.R Nagar, Hyderabad and found the said premises being used for prostitution. A.1 is said to be the brothel house organizer, whereas A.2 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.2 is abuse of process of law and hence the proceedings against him may be quashed.

4) Learned Public Prosecutor contended A.2 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.2 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.2 in C.C.No.185 of 2013 on the file of learned Judicial First Class Magistrate-cum-Excise Court at Erramanjil, Hyderabad.

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

U.DURGA PRASAD RAO, J

Date: 18.02.2015
SCS

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

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