

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2084 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/A.3 and A.4 seek quashment of the proceedings in C.C.No.1136 of 2014 on the file of XXIV Metropolitan Magistrate, Cyberabad, R.R.District.

2) The petitioners/A3 and A4 along with A.1 and A.2 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 03.05.2014, the Police of Sanathnagar P S , Hyderabad raided the House bearing No.14-20-156/B79, R.K.Society, Borabanda and found the said premises being used for prostitution. A.1 and A.2 were said to be the brothel house organizers, whereas A.3 and A.4 are the customers. The police registered crime and investigating the matter.

3) Learned counsel for petitioners 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 petitioners/A.3 and A.4 is abuse of process of law and hence the proceedings against them may be quashed.

4) Learned Public Prosecutor contended A3 and A4 are co-accused and liable for prosecution.

5) I find force in the submission of petitioners. 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 petitioners/A.3 and A.4 is not that of either running brothel house or procuring women for the purpose of prostitution or that they are living by earning money on prostitution. They were booked along with other accused only as customers of the flesh trade. Therefore, Sections 3 to 5 are not applicable to them. It is interesting to note that none of the other penal provisions in the Act either describe them as offenders. Therefore, there is any amount of force in the submission of learned counsel for petitioners 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 petitioners would amount to abuse of process of law.

7) In the result, this Criminal Petition is allowed quashing the proceedings against petitioners/A.3 and A.4 in C.C.No.1136 of 2014 on the file of XXIV Metropolitan Magistrate, Cyberabad, R.R.District.

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

U.DURGA PRASAD RAO, J

Date: 25.03.2015

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

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