

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.134 of 2015

ORDER:

The petitioners/Accused Nos.4 and 5 along with A1 to A3 is accused of committing offences under Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 (for short "the Act"). On the evening of 12.12.2014, the Police of Medipally P.S raided the residential Plot Nos. 30 and 31, CCMB Colony Boduppall and found the said premises being used for prostitution. A2 and A3 are said to be the brothel house organizers, A1 was pimp whereas A4 and A5 are the customers. The police registered crime and investigating the matter.

2) Now the petitioners/A4 and A5 filed this petition under Section 482 Cr.P.C seeking quashment of the proceedings in C.C.No.40 of 2015 on the file of III Metropolitan Magistrate, Cyberabad, L.B.Nagar.

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 petitioners/ A4 and A5 is abuse of process of law and hence the proceedings against them may be quashed.

4) Learned Public Prosecutor contended A4 and A5 are 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 allegations against the petitioners/A4 and A5 are 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

customers to the flesh trade cannot be treated as offenders 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/A4 and A5 in C.C.No.40 of 2015 on the file of III Metropolitan Magistrate, Cyberabad, L.B.Nagar.

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

U.DURGA PRASAD RAO, J

Date: 22.01.2015
Murthy

^[1] 2014(2)ALD(Cri)264

^[2] 2013(2)ALD(Cri)393