

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.11695 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A3 seeks to quash the proceedings in C.C.No.1766 of 2011 on the file of Additional Junior Civil Judge-cum-XVI Metropolitan Magistrate, Cyberabad at Kukatpally.

2) The police of Sanathnagar PS registered FIR No.144 of 2008 with the allegation that on 26.04.2008 at about 17.30 hours on credible information that an organized prostitution is going on in Ashok Colony, Sanathnagar and on obtaining permission from ACP, Balanagar proceeded to H.No.7-2-49/A/6/1 with the staff and on search found one old woman in the hall and one male and female person in the room and two female persons in another room and on their confession came to know that A1 was running the brothel house in the said premises and A2 is looking after the maintenance of the same and A3 is the customer. After investigation the SI of Police, Sanathnagar PS laid charge sheet against A1 to A3 for the offences Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 (for short "PIT Act"). The Committal Magistrate accordingly took cognizance of the offence.

Hence the instant petition by A3.

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 only as a customer of the flesh trade. Therefore, Sections 3 to 5 are not applicable to him. So, 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.1766 of 2011 on the file of Additional Junior Civil Judge-cum-XVI Metropolitan Magistrate, Cyberabad at Kukatpally.

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

U. DURGA PRASAD RAO, J

Date: 09.03.2016

Murthy

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

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