

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.12778 of 2015

ORDER:

The criminal petition is filed by petitioners/A4 and A5 under Section 482 Cr.P.C. to quash the proceedings in C.C.No.162 of 2015 on the file of the Special Judicial First Class Magistrate at Erramanzil, registered for the offences under Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956.

Heard the learned counsel appearing for the petitioners/A.4 and A.5 and the learned Public Prosecutor, representing the State.

The allegations leveled against the petitioners in brief are as follows:

On 26.01.2014 at about 09.00 p.m. on information, the Inspector of Police, Bowenpally along with mediators conducted raid on Plot No.81, Satyasai Enclave, Old Bowenpally, and found A3 (non-petitioner) and she confessed that A.1 and A.2 were running brothel house in the said premises without the knowledge of the house owner and they used to procure sex workers on payment basis of Rs.10,000/- for ten days and they used to collect Rs.1,000/- from each customer, and she has been looking after the said business in the absence of A1 and A2. That the police personnel found the petitioners/A4 and A.5 in different rooms along with two female persons and they disclosed their identity and admitted that they came for participation in sexual intercourse with the ladies being supplied by A.1 to A.3 on payment of amount as demanded by A.1 to A.3. The police personnel apprehended the petitioners and A.3, seized some cash, their mobile phones etc. under cover of mediators report. As per the investigation done by

the police, the non-petitioners/A1 to A3 are running brothel house and the petitioners/A.4 and A.5 are their customers.

The investigation led to the conclusion that the petitioners herein were participating in prostitution with sex workers being supplied by A.1 to A.3 It is alleged that they have contravened the provisions of Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956.

The point for consideration is as to whether all further proceedings insofar as they are against the petitioners/A.4 and A.5 in C.C.No.162 of 2015 are liable to be quashed?

The contention of the learned Counsel appearing for the petitioners/A.4 and A.5 is that they are only customers but not indulged in any obscene acts as per the contents of FIR. He also contended that none of the witnesses or panchas have witnessed that the petitioners were indulging in the sex with any of the sex workers. Therefore, no offence cast upon the petitioners. Therefore, learned Counsel submits that prosecuting the petitioners/A.4 and A.5 for the offences alleged is nothing but abuse of process of law and therefore the proceedings against them are liable to be quashed.

It is settled proposition of law as has been laid down by the Apex Court in catena of authorities that the inherent power of quashing the proceedings can be invoked where it manifestly appears that there is a legal bar such as want of sanction; where the allegations in the FIR or complaint taken at its face value do not constitute any offence; where the allegations constitute an offence but there is no legal evidence or the evidence adduced clearly fails to prove the charge. It is also well settled proposition that when exercising the jurisdiction, the High Court would not ordinarily embark upon an enquiry whether the evidence in

question is reliable or not which is the exclusive domain of a trial Court.

I have carefully scanned through the entire material on record including the statements of the witnesses, the confessional panchanamas and recovery panchanama. I have no hesitation in holding that the alleged acts that are attributed to the petitioners if they are taken to be true on its face do not attract any of the penal provisions as alleged. The material also do not show that the petitioners/A.4 and A.5 were in any way indulging in prostitution. There is also no evidence on record to show that the petitioners/A.4 and A.5 were living on the earnings of the prostitution nor is there any evidence to show that they have procured or induced any person for the sake of prostitution. Even at the cost of repetition, it may be stated that the entire material evidence on record revolves round the fact that the petitioners/A.4 and A.5 were present at the place where the police personnel conducted raid. Therefore, continuation of the proceedings against the petitioners/A.4 and A.5 for the alleged offences is nothing but abuse of process of law and the same are liable to be quashed.

In the result, the Criminal Petition is allowed and the proceedings in C.C.No.162 of 2015 on the file of the Special Judicial Magistrate of First Class, Erramanzil, registered for the offences under Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 against the petitioners/A.4 and A.5 are hereby quashed.

M.S.K.JAISWAL, J

June, 2016

Dsr/smr