

THE HONOURABLE SMT JUSTICE ANIS

CRIMINAL PETITION No.14088 of 2016

ORDER

This petition under Section 482 Cr.P.C. is filed by the petitioner/A5 seeking to quash the proceedings in P.R.C.No.25 of 2016 on the file of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, in connection with Cr.No.217 of 2016 of S.R.Nagar Police Station, Panjagutta, registered for the offences under Sections 370, 370 A(2) IPC and Sections 3,4, and 5 of Prevention of Immoral Traffic Act, 1956 (for short 'the Act'), against him.

2. Heard learned counsel for the petitioner/accused and learned Additional Public Prosecutor representing the State.

3. The case of the prosecution is that on 01.04.2016, on credible information that one Swetha was running brothel house under the guise of providing massage services, the Inspector of Police along with his staff proceeded to her house bearing door No.8-3-219/1, 1st floor, Bandi Towers, Ameerpet, Hyderabad, and found the said woman Swetha, aged 42 years, and on enquiry, she informed them that she was running brothel house under the guise of providing massage services in the name and style of Shades Massage Center by keeping the female sex workers. They searched the premises and found three male persons along with female sex workers. Based on the complaint, the aforesaid crime was registered against the accused.

4. Learned counsel for the petitioner argued that the alleged offences under Sections 370 and 370(A)(2) IPC are applicable to A1 and A2 as they organized and facilitated the alleged action of running brothel house under the guise of massage centre. He further submits that Sections 3 and 5 of the Act are also not applicable to the petitioner as he was not running the said house or procuring the women for the purpose of prostitution. Learned counsel has placed reliance on the decision of this Court in **Z. Lourdiah Naidu v. State of Andhra Pradesh**¹, wherein this Court held as under:

Section 4 of the Act does not punish or make the person liable for the acts done by the person who is running the brothel house. This Section does not make the person, who carries on prostitution for her own gain, liable for punishment, so also the person who is running the said premises. This Section is meant to punish those persons who are living on the earnings of the prostitute. The said provision cannot be invoked for prosecuting the persons who visit the said premises. Therefore, the ingredients of Sections 3 and 4 of the Act are not made out. In that view of the matter, continuation of proceedings against the petitioners in C.C.No.337 of 2008 on the file of the learned Special Judicial Magistrate of First Class, Yerramanzil, Hyderabad is nothing but abuse of process of Court.

Learned counsel also placed reliance on the decision of this Court in **Goenka Sajan Mumar V. State of Andhra Pradesh**², wherein this Court held as under:

“None of these sections speak about punishment to the customer of a brothel house. Admittedly, the petitioner does not fall under the provisions of Sections 3 to 7 of the Act, as the petitioner was not running a brothel house nor did he allow his

¹ 2013(2) ALD (Crl.)393 (AP)

² 2014(2) ALD (Crl.) 264

premises to be used as a brothel house. The petitioner is not alleged to be living on the earnings of prostitution. It is also not the case of the prosecution that the petitioner was procuring, inducing or in dicing any person for the sake of prostitution nor is it the case of the prosecution that any person was earning on the premises where prostitution is carried out.

Learned counsel further placed reliance on the decision of this Court in **Mohammed Shaeed V. State of Telangana**³ wherein this Court held as under:

“Viewing in the above context, no doubt the Immoral Traffic (Prevention) Act, 1956 is a piece of legislation aimed at preventing trafficking of women. However, the point is whether the said noble aim can be achieved by merely making organizers of brothel house and pimps as offenders while leaving the customers of flesh trade scot free. As the saying goes no single hand can produce claps, vicious circle of immoral trafficking will not be completed without active participation of the flesh customers. In my considered view, it is unwise to say that a customer who lurks in day and night in search of hidden avenues to quench his sexual lust is a hapless victim of a crime to place him out of the reach of the tentacles of the law which is intended to eradicate the pernicious practice of immoral trafficking of women. Such an unwarranted sympathy on a criminal will not help achieve desired results though aimed at high. After all, the Court can only describe the law as it is but cannot dictate what it ought to be. Yet, through this judgment I appeal to the Legislature to ponder over the possibility of bringing the flesh customers within the fold of Immoral Traffic (Prevention) Act, 1956.

In the result, this Criminal Petition is allowed quashing the proceedings against petitioner/A.5 in Crime No.864 of 2014 of Banjara Hills P.S, Hyderabad. As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

5. Following the aforesaid decisions of this Court and the reasons stated therein, the criminal proceedings against the

³ 2015(1) ALD (Crl.) 992

petitioner would amount to abuse of process of law. Therefore, the petitioner as a customer to the flesh trade cannot be treated as an offender under the Act. In view of the same, the criminal proceedings against the petitioner/A5 are liable to be quashed.

6. Accordingly, the Criminal Petition is allowed and the proceedings in P.R.C.No.25 of 2016 on the file of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, are quashed against the petitioner/A5.

Miscellaneous applications, if any, pending in this criminal petition shall stand closed.

28th September, 2016
sj



ANIS,J