

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1588-2008 (O&M)

Date of decision: August 12, 2016.

State through CBI

... **Petitioner**

v.

Anil Sethi and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri R.K. Handa, Special Public Prosecutor for the petitioner.

Shri J.S. Mehndiratta, Advocate for respondent No.1.

Shri Shashi Shankar, Advocate for respondent Nos.2 & 3.

A.B. Chaudhari, J. (Oral):

Heard learned Counsel for the rival parties.

In the present petition, challenge is to the order dated 8.3.2008 passed in Sessions Case No.62 of 16.9.2006 in State through CBI v/s Shabbir Ahamd Laway @ Shabbir Kala and others by which an application for framing additional charge under Section 5 of the Immoral Traffic (Prevention) Act (in short the Act) moved by the CBI, was dismissed by the Court.

In support of the present revision petition, learned counsel for CBI vehemently argued, inviting my attention to Section 5 of the Act, that there was a statement under Section 161 Cr.P.C. recorded by the CBI through District & Sessions Judge indicating procurement by the accused

who are proposed to be charged under Section 5 of the Act. According to him, scope of Section 5 is wide enough to include the act of the accused persons proposed to be charged with their visits to brothel also. He invited my attention to the statement that Shagufta had visited the residence of Dr. Goga at Indira Nagar and was introduced to K.C. Padhi and she went to the residence of Padhi where Padhi, on payment, had sexual intercourse with her. In the further part, it is stated that she was procured by Sabeena, the brothel owner. Thus, it is clear from the statement itself that it was Sabeena who was procurer who was running the brothel and not the accused persons who were proposed to be charged under Section 5 of the Act. That apart, I have seen the impugned order. The impugned order gives necessary details and there is a clear discussion about this aspect of the matter.

Nevertheless, the accused persons have been charged for heinous offence under Section 376 IPC.

I have perused Section 5 of the Act carefully, so also the text of the judgment of the Kerala High Court in that context. In my opinion, Section 5 of the Act cannot be read to extend its meaning to the visitors to the brothel. Section 5 relates to the person who procures or attempts to procure for the purpose of intercourse. The accused persons are the persons who used to make payment for sexual intercourse. There is no allegation that the accused persons had, from some place, procured the girls. To generalize the meaning of the word 'procure' and extend it to any such situation would not be harmonious construction of Section 5. In that view of the matter, I think the impugned order made by the learned trial Judge,

refusing to frame charge under Section 5 of the Act, as claimed by the CBI, cannot be faltered. In the result, I find no merit in the petition. That apart, counsel for both the parties state that there was no stay of the trial during pendency of the revision petition which was filed in the year 2008 nor any stay prayer was pressed and as a result the trial continued and large number of witnesses have already been examined. The stage has come when the Investigating Officer is under cross examination today. In such a situation, I think that should be another reason why the impugned order should not be interfered with.

In the result, I find no merit in the revision petition.

Dismissed.

[A.B. Chaudhari]
Judge

August 12, 2016.
kadyan

Whether speaking/reasoned Yes/No

Whether reportable Yes/No