

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1053 of 2014

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Chandan Kumar, Son of Ram Swaroop Prasad, Resident of Mohalla
- Mansoorganj, P.S.- Malsalami, District –Patna.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ajay Kr. Thakur, Adv.

Mr. Amit Kumar, Adv.

For the State : Mr. Sanjay Kr. Sharma, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 30-03-2017

Heard the parties.

2. The petitioner seeks setting-aside of an order, dated 22.09.2014, passed by the learned Additional Chief Judicial Magistrate, Patna City, in Alamganj P.S. Case No. 278 of 2013, whereby, he has taken cognizance of the offence punishable under Sections 290 read with Section 34 of the Indian Penal Code (*hereinafter referred to as the "IPC"*) and Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (*hereinafter referred to as the "Act"*).

3. Learned counsel, appearing on behalf of the



petitioner, drawing my attention to the First Information Report, has submitted that except for the allegation that the petitioner and others were found in objectionable condition in a Restaurant, there is absolutely no allegation against him. He has contended further that there is nothing mentioned in the First Information Report as to with whom the petitioner was found. There is no allegation of any transaction said to have taken place between the petitioner and the prostitute within the meaning of Section 2(f) of the Act to attract penal provisions under the Act. He has also submitted that the women, apprehended by the police, cannot be said to be the prostitutes within the meaning of the said Act. He has, accordingly, submitted that the place from where the petitioner and others were apprehended by the police cannot be said to be a brothel within the meaning of Section 2(a) of the Act.

4. In the present case, the case diary was called for by an order, dated 03.03.2017, which is available with learned Additional Public Prosecutor. He has not been able to point out from the said case diary that there is any material showing any transaction between the petitioner and any other person, who can be described as prostitute within the meaning of Section 2(f) of the Act.

5. Section 2(a) of the Act defines "brothel" as



follows;-

"2(a) "brothel" includes any house, room [conveyance] or place or any portion of any house, room [conveyance] or place, which is used for the purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes."

6. It is evident from a bare reading of definition of "brothel", as in Section 2(a) of the Act, that a house, room or place or any portion of house, room or place can be said to be a "brothel", if it is used for the purpose of sexual exploitation or abuse for gain of another person or for mutual gain of two or more prostitutes. There is no material to show that the place in question was being used for sexual exploitation or abuse for the gain of another person or for mutual gain of two or more prostitutes. Prostitution has been defined under Section 2(f) of the Act, which means sexual exploitation or abuse of persons for "commercial purpose". Unless there is transaction with commercial purpose, sexual exploitation cannot be established within the meaning of prostitution under Section 2(f) of the Act.

7. In that background, learned counsel, appearing on behalf of the petitioner, appears to be correct in his



submission that no offence under Section 3, 4 or 5 of the Act can be said to be made out, only on the allegation that the petitioner was found in a Restaurant in objectionable condition, particularly in the absence of any allegation that the petitioner was found in association with a prostitute in objectionable condition. It has also been rightly submitted that no offence under Section 290 of the IPC can be said to be made out in the absence of any complain of annoyance caused to others.

8. In view of the discussion, as above, the impugned order, taking cognizance, dated 22.09.2014, passed by the learned Additional Chief Judicial Magistrate, Patna City, in Alamganj P.S. Case No. 278 of 2013, is set-aside.

9. This application is, thus, allowed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07.04.2017
Transmission Date	07.04.2017

