

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.224 of 2014

Periayasamy

... Petitioner

Vs

The Deputy Superintendent of Police,
Anti Traffic Cell, CBCID,
Chennai - 600 002

... Respondent

Prayer:- Criminal Revision filed under Sections 397 and 401 of Cr.P.C., to set-aside the order of conviction and sentence passed in C.A.No.75 of 2012 on the file of the learned VI Additional Sessions Judge, in charge IV Additional Sessions Court, Chennai, dated 29.03.2012 confirming the order of conviction passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.7555 of 2010 dated 14.02.2014

For Appellant : Mr.C.S.S.Pillai

For Respondent : Mr.R.Ravichandran,
Gov. Adv. (Crl. Side)

O R D E R

Totally there are four accused in C.C.No.7555 of 2010 on the file of the IV Metropolitan Magistrate, Saidapet, Chennai and the petitioner is A4. The petitioner /A4 stood charged for the offences under Sections 4(1), 5(1) of Immoral Traffic Prohibition (ITP) Act. The trial court, found the petitioner guilty on both the charges, and by judgment dated 29.03.2012, convicted the petitioner and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for 3 months for the offence under Section 4(1) of ITP Act, and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.2000/-, in default, to undergo rigorous imprisonment for 3 months for the offence under Section 5(1) ITP Act. Challenging the above said conviction and sentence, the petitioner/A4 preferred an appeal in C.A.No.75 of 2012 on the file of the IV

Additional Sessions Court, Chennai and the lower appellate court confirmed the conviction and sentence and dismissed the appeal. Aggrieved by the same, the petitioner is before this court with this revision.

2. The case of the prosecution, in brief, is as follows:-

A1 and A2 in this case engaged the petitioner/A4, for procuring ladies for immoral trafficking and also paid a sum of Rs.5000/- for that purpose. Then the petitioner engaged P.W.9 and P.W.11 and asked them to proceed to a hotel, where A1 and A2 were staying and there A1 and A2 instigated them for prostitution and also had intercourse with them. P.W.1 is the Inspector of Police, working in the Anti Traffic Cell, on receipt of a secret information regarding the above occurrence, proceeded to the hotel, along with lady constables and inspected the room, where they found P.Ws.9 and 11, and both of them were examined by P.W.10, Hemalatha, Sub-Inspector of Police. Thereafter, he seized some cash and cellphone belonging to A1 and A2 and then he arrested them. Thereafter, he registered a case in Crime No.5 of 2008 for the offences under Sections 4(1)5 (1)(d) and 7(2) ITP Act and 376 IPC.

3. P.W.15, Deputy Superintendent of Police, CBCID, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, recorded the statements of the witnesses and sent P.Ws.9 and 11 for medical examination. P.W.15 also recorded the statements of the doctors who examined P.Ws.9 and 11. After completion of investigation, he laid final report for the offences under Sections 4(1)5(1)(d) and 72 of ITP Act.

4. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 15 witnesses were examined and 17 documents were exhibited, besides 13 material objects were marked.

5. Out of the witnesses examined, P.W.1 is the Inspector of Police, who registered the complaint. P.W.2 and P.W.3 had turned hostile. P.W.4 is the Doctor, who examined A1 and has given a medical report Ex.P.7. P.W.5, Doctor, who examined P.Ws.9 and 11 and issued a certificate Ex.P.8 and Ex.P.9. P.W.6, Doctor, who examined the P.Ws.9 and 11 and has given a certificate Ex.P.12 and Ex.P.13 stating that their age

was above 18 and below 20 years. P.W.7 Sub-Inspector of Police, accompanied P.W.1 during the raid. P.W.8, Police Constable also accompanied P.W.1. P.W.9, the victim girl, turned hostile. P.W.10, Sub Inspector of Police, also accompanied P.W.1 during the raid. P.W.11 is the another victim girl. According to her, on 27.12.2008 at about 10.00 p.m., A4 called her over phone and induced her to come along with him to the beach and hence, she along with P.W.9 went near Albert Theatre, Egmore, at that time, A4 has given Rs.3500/- and took them to a hotel in Egmore and let them into a room, where A1 and A2 were staying.

6. P.W.12 an NGO has also spoken about the raid conducted by P.W.1 and other police officials and also arrest of A4. P.W.13 is the Assistant Director of Forensic Department, examined the dresses worn by the accused. P.W.14 is the owner of the hotel, where the occurrence had taken place. P.W.15 is the investigating officer, who conducted investigation, recorded the statements of the witnesses and after completion of investigation, laid charge sheet against the accused.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, he did not choose to examine any witness, entries in register of arrival of Hotel Embee International was marked as Ex.D1 on his behalf.

8. Having considered all the above materials, the trial Court convicted the petitioner/accused as stated in the first paragraph of this judgment. Challenging the same, petitioner/A4 preferred an appeal in C.A.No.75 of 2012 on the file of the VI Additional Sessions Court, Chennai and the lower appellate court confirmed the conviction and sentence and dismissed the same. Challenging the conviction and sentence, the petitioner/A4 filed this Criminal Revision. सत्यमेव जयते

9. Mr.C.S.S.Pillai, learned counsel appearing for the petitioner would submit that there is no evidence available on record to show that the petitioner/A4 has induced P.Ws.9 and 11 to involve in the prostitution and P.W.9, who is one of the victim girl, involved in the above occurrence, turned hostile and P.W.11, immediately after the occurrence gave statement under Section 164 Cr.P.C, where she has not mentioned anything about A4. Apart from that, P.W.1 also admitted that he did not seize the cellphones of P.Ws.9 and 11 to establish that A4 had contacted P.Ws.9 and 11 prior to the occurrence.

10. He would further submit that in a similar circumstance, A2 filed a revision against the conviction in CrI.R.C.No.206 of 2014 before this Court and this Court by an order dated 27.11.2015 has held that the prosecution did not produce any evidence to show that there was any meeting between the victim girls and A4. In view of the same, there is no material available on record to establish the guilt of the petitioner/A4.

11. Per contra, Mr.R.Ravichandran, learned Government Advocate(Crl. side) appearing for the respondent would submit that P.W.11 in her evidence has categorically stated that only A4 had called her and asked her to come to a Theatre near Egmore in the guise of taking them to beach and thereafter, A4 took them to a hotel and let them into a room, where A1 and A2 stayed and the prosecution has clearly established that it is only the petitioner/A4 induced them involve in prostitution, and the prosecution has established the guilt of the petitioner/A4.

12. I have considered the rival submissions and perused the materials available on record carefully.

13. The case of the prosecution is that A1 and A2 asked A4 to procure ladies and had also given a sum of Rs.5000/- to him for that purpose. Subsequently, A4 called P.Ws.9 and 11, the victim girls and he induced them to commit prostitution, and took them to the hotel, where A1 and A2 stayed. Out of the two victim girls, P.W.9, turned hostile and the only remaining witness is P.W.11. Even though P.W.11 in her chief examination has stated that it is only this accused has called them over phone in the guise of taking them to the beach, thereafter, he has given some amount and took them to a hotel, where A1 and A2 stayed. But, immediately after the occurrence, she has given a statement under Section 164 Cr.P.C before the Judicial Magistrate, in which she did not mention anything about A4, but she has simply stated that one person has called them over phone and took them to the hotel, where A1 and A2 were stayed. Apart from that in order to establish that there was a prior meeting of mind, the prosecution did not collect any evidence and they have not seized the cellphones used by P.Ws.9 and 11 and no call details have been furnished to show that only A4 has called P.Ws.9 and 11 for the purpose of involving them in prostitution.

14. P.W.1 also clearly admitted in his cross examination that he has not seized the cellphones and he also gone to the extent of saying that A4 did not contact P.W.9. P.W.15 investigating officer has also stated that he has not collected any evidence to show that A4 has contacted P.Ws.9 and 11. Hence, in the absence of any material to show that only A4 induced P.Ws.9 and 11 for the purpose of involving them to prostitution, I am of the considered view that the prosecution has failed to prove the guilt of A4 beyond any reasonable doubt. Apart from that in Criminal Revision filed by A2 in this case, in CrI.R.C.No.206 of 2014, dated 27.11.2015, this Court has held as follows:

"17. P.W.15 was examined on the side of the prosecution, who was working as Superintendent of Police in Anti-vice Squad CBCID office during the relevant time. P.W.15 has taken over the investigation from P.W.1 and he has filed the charge sheet in this case. In his deposition, he has stated that to show the date and time of raid and the arrest of the accused in this case, P.W.1, who initially investigated the case, did not produce the general diary. P.W.15 also admitted that there is nothing on record to show that prior to this incident, there was any meeting between A4 and the victim girls. He also admitted that the rough sketch regarding the place of incident has not been prepared and produced before the Court....

19. As mentioned above, the victim girls themselves did not support the case of the prosecution. They have merely stated before the Magistrate at the earliest point of time that they were arrested by the respondent police on suspicion. There are lot of variations with regard to the deposition of P.W.1 and P.W.12 with reference to the time of their arrival in the hotel and the arrest of A4 on the next date of the occurrence. The prosecution has not produced any evidence to show that there was meeting of minds between the victim girls and the broker, A4 prior to the incident and therefore, the ingredients of the offence under Section 5(1)(d) of this Act cannot be pressed into service. The courts below have simply brushed aside the inconsistencies in the version of the prosecution witnesses and passed the order of conviction."

15. In the above circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the accused and both the courts below without considering the same, convicted the petitioner/A4. Hence, the judgment of the courts below is liable to be interfered with.

16. In the result, the Criminal Revision Petition is allowed and the conviction and sentence imposed on the petitioner by the courts below are set aside and the petitioner/A4 is acquitted from all the charges. Fine amount if any paid by him shall be refunded to him. Bail bond, if any executed by him shall stand cancelled.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The VI Additional Sessions Judge,
Incharge of IV Additional Sessions Court,
Chennai.
2. The IV Metropolitan Magistrate,
Saidapet, Chennai.
3. -Do- Thro The Chief Metropolitan Magistrate,
Egmore Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Superintendent,
Central Prison, Puzhal,
Chennai.
6. The Deputy Superintendent of Police,
Anti Traffic Cell, CBCID, Chennai-600 002.

+3cc to M/S.C.S.S.Pillai, Advocate Sr.19299

Cr1.R.C.No.224 of 2014

gmi[co]
srg 25/04/2017