

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.830 of 2017

ORDER:

This revision is preferred by the A.1 in C.C.No.506 of 2014 out of four accused, against the order dated 08.11.2016 in CrI.M.P.No.1130 of 2016 in C.C.No.506 of 2014 passed by the Spl.Judicial First Class Magistrate for Excise Cases, Hyderabad, for dismissing the petition filed by the A.1 seeking to discharge him from the case for non-availability of any substantive evidence against her for the offences u/ sec.3,4,5 and 7(1) of the Immoral Traffic (Prevention)Act, 1956 (for short, 'the ITP Act').

2.The grounds in the revision vis a vis the oral submissions of the learned counsel for the revision petitioner are that the prosecution failed to prove the role of the petitioner by producing any evidence except relying on the confessional statements of the other accused which are not substantial evidence as per settled law. The prosecution failed to prove that the petitioner was running a brothel house under the guise of Spa named 'Heavenly Spa Center' and that she has been organizing prostitution. The raid, recovery and almost investigation, conducted by the Sub Inspector of Police, is clear violation of Section 13 of the ITP Act and GO Rt. No.475 which stipulates that the investigation to be conducted by an officer not below the rank of Inspector of Police, so as the investigation is conducted in a prejudicial manner and it shall not be proved. The version of the learned Magistrate in the impugned order that the offence u/ sec. 370 IPC is triable by the Sessions Court before commencement of trial and for that purpose intending to add charge u/ sec.370 IPC is erroneous. The petitioner was, in fact, not found during the alleged raid nor at the time of panchanama and nor she was identified by any of such victims during investigation but for on

purported confession arrested of co-accused and after a considerable lapse of time even there is no any prima facie material much less any eye witness statement against her and thus continuation of the proceedings against her is unjust and is liable to be set aside the cognizance and dismissal order of the lower Court impugned herein.

3. Whereas, it is the submission of the learned Public Prosecutor for the respondent-State that the impugned order of the trial Court holds good and no way requires interference while sitting in revision and thereby sought for dismissal of the revision.

4. Heard and perused the material on record.

5. The impugned order of the lower Court speaks that from the confession of A.2 the involvement of A.1 discloses of her running a brothel house under the guise of a Spa at the scene of offence and the A.1 also procuring female workers which include L.Ws.2 and 3 for prostitution which clearly attract the ingredients of the offences of the ITP Act. Further held that in accordance with the directions of the High Court in CrI.P.No.3158 of 2015, dt.28.04.2015 in S.Naveen Kumar @ Naveen Vs. State of Telangana rep. by Public Prosecutor, High Court, Hyderabad, the material on record prima facie attracts the offence u/ sec.370 of IPC, also and thus it is a fit case to allow Sec.216 CrPC filed by the prosecution and after adding Sec.370 CrPC, the jurisdiction and authority of the trial Court totally out of its purview.

6. The brief facts of the case are that on 19.04.2014, at about 13.30 hours, a complaint was received from Sub Inspector of Police, Punjagutta Police Station, about running of 'a Body Spa Centre' and illegal activities of prostitution going on therein i.e., at 2nd floor, Flat No.6-3-852/ 2/ B/ 5, Satyan Nivas, Aparajitha Colony, Lal bungalow,

Ameerpet, Hyderabad. After taking permission from ACP, Panjagutta, he conducted raid at the suspected place and found two male and female persons in separate rooms without clothes in compromising condition. With the assistance of WPC, the confessional statement of Smt. Praveena Rani(A.2), was recorded by seizing suspected material from the scene. In pursuance of confession of A.2, it was disclosed that A.1 used to procure sex workers including L.W.2 Santhoshini and L.W.3 Rafika and force them to provide massage to male customers in order to seduce them to indulge in sexual intercourse by collecting Rs.2,000/- and Rs.3,000/- per each customer. A.2 further confessed about the living of A.1 on the earning of prostitution. Basing upon the charge sheet filed by the Inspector of Police, Punjagutta, the learned Magistrate has taken cognizance for the offences under the ITP Act also against the A.2 besides on A.1. It is after securing their presence and supply of copies and on hearing charges framed and discharge application of revision petitioner/ A.2 supra was dismissed and additional charge u/ sec.370 IPC also framed which is the subject matter in revision.

7. The occurrence was dated 19.04.2014. In fact, Section 370-A IPC is introduced by amended Act 13 of the 2013 w.e.f. 03.02.2013. Section 370-A IPC reads as follows:-

Section 370A:- Exploitation of a trafficked person:

1. Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.
2. Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished With rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

8. Here, the victims though not minors even trafficking major and engages such person for exploitation in any manner is punishable with not less than three years which may extend to 5 years and also fine but for to say the said penal provision not incorporated either in the F.I.R. or in the chargesheet or even while framing charges in not taken care of that is not be all and end all in view of the power of the Court to alter by delete or amend or add any charge at any stage after framing of charges and till pronouncement of judgment under Section 216 CrPC but for to comply Section 217 CrPC if any, while case is pending trial by recall of any witness if already examined for further examination pursuant to altered charges.

9. Now the only issue is whether there is any substantial accusation against the petitioner/ A.2. The confession of the co-accused u/ sec.30 of the IE Act, is relevant during joint trial. From what the petitioner placed reliance of the Constitution Bench expression of the Apex Court in Hari Charan Kurmi And Jogia Hajam vs State Of Bihar¹ as the confession of co-accused is not a substantive evidence but a corroborative piece. It is premature at this stage to decide to what extent the disclosure statement of A.1 leading to any discovery of fact admissible under Section 27 of the IE Act, and hit by the other portion u/ sec.25 of the IE Act, and then to consider the same to that extent of admissibility u/ sec.27 read with 30 of the IE Act, against the A.2 with reference to the Section 133 r/w 144 of the IE Act. Apart from it, when there are statements of the victim women L.Ws.2 and 3 and that also discloses from the police final report a basis for the accusation against the petitioner-A.2 on the face value of the allegations. There is no roving enquiry required in framing of the charges but for to consider on the

¹ AIR 1964 SC 1184

face value and having regard to the above and from perusal there is nothing to interfere with the impugned order but for to say neither impugned order nor dismissal of the revision against the same no way prejudice any of the offences of the accused during trial including for the charge u/ sec.370 and 370-A IPC if any.

10. Accordingly and in the result, the revision is dismissed. Consequently, miscellaneous petitions, if any pending in this revision, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:24.04.2017.

Vvr.

