

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1988 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner requesting to quash the proceedings in P.R.C. No.56 of 2016 on the file of IX-Metropolitan Magistrate, Kukatpally at Miyapur.

2. The petitioner, who is arraigned as accused No.4 viz., Ashok Umpathi, alleged to have committed the offences punishable under Sections 370-A of Indian Penal Code, 1860 (IPC), and 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956.

3. Heard Sri Jakkula Sridhar, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Telangana, and perused the material on record.

4. The learned counsel would submit that even according to the prosecution, the petitioner herein, who is arraigned as accused No.4, is a customer, and, in view of the decisions of this Court in Criminal Petition No.14088 of 2016, dated 28.09.2016, **Z. Lourdiah Naidu v. State of Andhra Pradesh¹**, **Goenka Sajan Kumar v. State of Andhra Pradesh²**, **Mohammed Shaeed v. State of Telangana³**, the petitioner being a customer, cannot be made liable to be prosecuted, more particularly, in view of the decision of a learned Single Judge of

¹ 2013(2) ALD (CrL.) 393 (AP)

² 2014 (2) ALD (CrL.) 264

³ 2015 (1) ALD (CrL.) 992

this Court in Criminal Petition No.14088 of 2016, dated 28.09.2016, wherein the offence punishable under Section 370-A(2) of IPC has also been alleged besides 370-A of IPC.

5. In the present case, the offence punishable under Section 370-A of IPC is alleged. The submission of the learned counsel is also to the effect that the victim is not a minor girl, and, therefore, Section 370-A of IPC would not attract. So far as sub-section (2) of Section 370-A of IPC is concerned, there is no answer by the learned Additional Public Prosecutor, whether it would attract majors or it has to be read in the light of sub-section (1) of Section 370-A of IPC.

6. Now, the question is whether the customer can be brought within the fold of Section 370-A of I.P.C.

7. The submissions made by the learned counsel for the petitioner is, even at the time when the police raid was conducted only the petitioner/A-4 was in the room, but the victim is not available and the statement of victim is clear enough to show that at the relevant time she went outside for shopping.

8. Learned counsel for the petitioner placed certain other judgments along with material papers. He has also placed reliance on a judgment in **S. Naveen Kumar @ Naveen v. State of Telangana**⁴ of this Court.

⁴ 2015 (2) ALD (CrI.) 156

9. In **Mohammed Shaeed** (3 supra) this Court took a view that the ‘customer’ also falls within the fold of Section 370-A of IPC.

10. Learned Single Judge has elaborately dealt with in taking such a view in paragraph-7 in **S. Naveen Kumar** (4 supra), which is apt to quote herein:

“7. However, that is not end of the matter. A perusal of the charge-sheet would show that the police while charge-sheeting A1 and A2 for the offences under Sections 3, 4, 5 and 6 of PIT Act and under Section 370-A IPC, surprisingly charge-sheeted petitioner/A3 only under Section 4 of PIT Act, but not under Section 370-A IPC. Section 370-A IPC reads thus:

“*Section 370-A:- 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.”

The phraseology “*engages such minor/such person for sexual exploitation in any manner*” employed in sub-sections (1) and (2) of Section 370-A IPC in clear terms indicates that the flesh customer who hires the victim woman for sexual exploitation also falls within the fold of Section 370-A as an offender.”

11. When such a view is taken by this Court, certainly, this Court cannot, now, take a different view, but, however leaving it open to the petitioner to agitate factual aspects afore mentioned, before the Sessions Court at the time of framing of charges.

12. The learned Single Judge in paragraphs 10 to 14 in **S. Naveen Kumar** (4 supra) held thus:

“10. In my considered view, to secure the ends of justice, the High Court can exercise its inherent power to give such direction when the material placed by the prosecution i.e., charge-sheet discloses the commission of offence under Section 370-A IPC.

11. In the result, while quashing the proceedings in PRC No.103 of 2014 on the file of II-Additional Civil Judge-cum-XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad under Section 4 of PIT Act against the petitioner/A3, learned Committal Magistrate is directed to take cognizance under Section 370-A IPC against the petitioner/A3.

12. This criminal petition is accordingly disposed of.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

14. The Registrar (Judicial) is directed to forward copy of this order to D.G.Ps of Andhra Pradesh and Telangana to circulate to all the police stations.”

13. Following the aforesaid ruling, while quashing the proceedings in PRC No.56 of 2016 on the file of IX-Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad under Section 4 of the Immoral Traffic (Prevention) Act, 1956 against the petitioner/accused No.4, learned Committal Magistrate is directed to take cognizance under Section 370-A of I.P.C. against the petitioner/accused No.4.

14. The present Criminal Petition is accordingly disposed of.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

Dt. 13.03.2017

pv/gbs