

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.402 of 2017

ORDER:

This revision is preferred by the A.1 in C.C.No.250 of 2013 out of two accused, against the judgment dated 20.01.2017 in CrI.A.No.624 of 2015 passed by the Spl.Judge for Trial of Offences Under SCs & STs(POA) Act-cum-VI Addl.Metropolitan Sessions Judge, Secunderabad, confirming the judgment in C.C.No.250 of 2013 dated 07.07.2015 passed by the Spl.JFCM for Excise Cases, Hyderabad, convicting the A.1-revision petitioner along with A.2 for the offence punishable under Section 4 of the Immoral Traffic (Prevention )Act, 1956 (for short, 'the ITP Act'), with a sentence to undergo Simple Imprisonment for a period of six months by setting off the remand period they undergone, with the grounds in the revision that the respective judgments of the Courts below are illegal, improper and incorrect and without legal appraisal and logical conclusion convicted the revision petitioner. There is no positive and cogent evidence on prosecution side to prove that the petitioner induced or procured the victim for prosecution. The Courts below erred in convicting the revision petitioner based on the evidence of P.Ws.3 to 5 who are victims of commercial sex and trafficking being under the influence of police. The Courts below failed to see that there is no physical sexual act and further failed to see that the case is registered by the police for statistical purpose by frequently visiting to the petitioner's house and harassing him, without any involvement of the petitioner in the case. That the Courts below failed to consider the omissions and contradictions in the evidence of prosecution witnesses which contradictions and omissions create doubt on the genesis of prosecution case and not properly appreciated the evidence on record.

Hence, to set aside the respective judgments of the Courts below by allowing the revision.

2. Whereas, it is the submission of the learned Public Prosecutor for the respondent-State that the impugned judgments of the Courts below holds good and no way requires interference while sitting in revision and thereby sought for dismissal of the revision.

3. Heard and perused the material on record.

4. From the above, coming to the factual matrix, in the trial Court, on prosecution side, P.Ws.1 to 6 were examined and Exs.P.1 to P.3 were marked viz; Ex.P.1 confession-cum-seizure panchanama, Ex.P.2 written complaint of P.W.6 Inspector of Police (Investigating officer), and Ex.P.3 First Information Report and on hearing both sides, from said evidence, convicted the revision petitioner-A.1 along with A.2 with the punishment as stated supra, holding that the prosecution able to prove the case through the evidence of P.W.1 Decoy Police Constable, who acted as per the instructions of the Inspector who received reliable information about running of brothel by the revision petitioner and one A.2, on 3.12.2013, as a part of raid had a deal with revision petitioner at car parking area of Secunderabad Railway Station for getting a female person for immoral activities by giving Rs.400/- to the revision petitioner and on which the revision petitioner took him back side of parking place and showed him nine female persons and asked to select one among them and immediately he signaled to the Inspector who along with his team reached there and apprehended the revision petitioner along with A.2; P.W.2 Women Police Constable who accompanied the Inspector and other police acted as decoy also corroborated with the P.W.1; P.Ws.3 to 5 victim women/sex workers deposed that the A.1 procures male

customers and A.2 transports them in his auto from one place to another for carrying prosecution and therefrom the trial Court found the A.1 and A.2 guilty for the offence punishable u/ sec.4 of the ITP Act, only and convicted but found not guilty for the offence u/ sec.5(b) and 5(c) of the Act saying as the condition of transport of sex worker/ prostitutes from one place to other is absent in the charge.

5. The occurrence was dated 03.12.2013. 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.

6. Here, P.Ws.3 to 5 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. Once the accused persons put to trial, there is a bar for separate trial for that provision again but for to consider the application of Section 4 of the ITP Act. When the said evidence of that coupled with that of P.W.2 in corroboration of the versions of P.Ws. 1 and 6 when categorically establish the offence under Section 4 of the ITP Act committed by the accused, there is nothing to interfere with said

conviction judgment of the trial Court confirmed by the lower appellate Court while sitting in the revision.

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

Date:18.04.2017.

Dr. B.SIVA SANKARA RAO J,

Vvr.

