

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2994 of 2010

ORDER:

Heard learned counsel for the petitioner/accused and also learned Public Prosecutor representing the State.

The petitioner filed this petition to quash the proceedings in C.C.No.549 of 2007 on the file of Additional Judicial First Class Magistrate, Gudivada, Krishna District, registered for the offence under Section 7(1)(b) of Immoral Traffic (Prevention) Act, 1956 (for short 'the Act').

The police after registering the crime and investigation filed the charge sheet. It is at the post cognizance stage of the case, the petitioner filed the quash petition with the contentions that Section 7(1)(b) of the Act has no application to a customer for the allegation beside not true and should not have been charged and there is no any evidence even of there was any sexual intercourse taken place for hire and in the absence of which, the very taking of cognizance by the learned Magistrate is contended as unsustainable.

Section 7 of the Act reads as follows:

"7. Prostitution in or in the vicinity of public places:—

- (1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—
- (a) which are within the area or areas, notified under sub-section (3), or
- (b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.]

(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.]

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine ³⁴ [which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year: Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled. Explanation.—For the purposes of this sub-section, “hotel” shall have the meaning as in clause (6) of section 2 of the Hotel Receipts Tax Act, 1980 (54 of 1980).]

(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.”

From perusal of the police final report, there is nothing that practically attracts Section 7(1)(b) of the Act with reference to the facts. It is not even a case of the present petitioner/A.3 is living on the earning of the prostitution to attract Section 4 of the Act or allowing any premises by him for keeping brothel.

Having regard to the above and the case is also of 10 years past, this Court to sub serve the ends of justice quashed the proceedings against the petitioner by allowing the Criminal Petition.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 03.08.2017
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