

THE HON'BLE SRI JUSTICE N.BALAYOGI**CRIMINAL PETITION No. 2420 of 2011****ORDER :**

This Criminal Petition is filed by the petitioner under Section 482 of Cr.P.C., seeking to quash the charge sheet filed in CC.No.333/2010, on the file of the III Metropolitan Magistrate, Cyberabad at L.B. Nagar.

2. The contention of the petitioner is that the Sub Inspector of Police, L.B. Nagar police station filed a suo-motu case against the petitioner for the offences under Sections 3,4, and 5 of Prevention of Immoral Traffic Act (herein after called as PIT Act) 1956, that no offence is made out against the petitioner under PIT Act, as the petitioner is the victim in the said episode. There is no averment regarding the inducement or the overt act played by the petitioner. In the absence of such averment, no offence is made out.

3. Per contra, learned Public Prosecutor refuted the said contentions by arguing that there is strictly overt act in the report and charge sheet stating that on 28.04.2010, the accused A1, allowed A2 & A3 for prostitution with victim Kum. Kalpana alias Sandhya. A perusal of the records shows that the Sub Inspector of Police, L.B.Nagar, is a *de facto* complainant and on 28.04.2010 at 15:45 hours one Suram Raj Kumar, A2 and Totipati Naresh Kumar, A3, while indulging in sexual act, by keeping the victim Kalpana at Padma Vamshi Lodge, L.B.Nagar, caught red handed and the same is registered as case in Crime No. 80/2010 for the offences 3,4 and 5 of PIT Act, 1956.

4. In the charge sheet in C.C. No.333/2010, the petitioner is added as A3. Allegation in the charge against the petitioner A3 is that on 28.04.2010 at 15:45 hours, on receiving credible information that prostitution is going on in Padma Vamshi Lodge, situated opposite to Kamineni Hospital, L.B.Nagar, the Sub Inspector of Police, L.B.Nagar Police Station, after obtaining search proceeding from ACP, Saroornagar, for conducting search, the Sub Inspector of Police along with LW-2 and 3 accompanied by panchayathdars, left the Police Station for Padma Vamshi Lodge, and conducted a raid on the said lodge. On seeing the police, the owner of the Lodge by name N. Madhusudhan Rao escaped from the place and on search in the lodge, they found one female with two male persons in room No. 104. On enquiry, one of the male persons revealed his identity as Suram Raj Kumar and stated that he along with his friend G.Naresh Kumar-petitioner herein, engaged one lady by name Kalpana at opposite to Kamineni Hospital for Rs.300/- and taken her to Padma Vamshi Lodge for indulging sexual act.

The Lodge owner had taken Rs.400/- towards room rent for two hours. When they both are doing prostitution with the said lady, the Sub Inspector, L.B. Nagar Police Station along with the staff and Punch Witnesses conducted raid on the Lodge and apprehended them. On enquiry, G.Naresh Kumar stated that he along with his friend Raj Kumar both engaged one woman, by name Kalpana at Kamineni Hospital and brought her to Padma Vamshi Lodge for sexual intercourse with her. The said women also stated that while she was in front of Kamineni Hospital, one Raj Kumar and Naresh Kumar came to her and engaged her for Rs.300/- and taken her to Padma Vamshi Lodge for prostitution. She further stated that the owner of the Lodge is

used to take Rs.100/- per hour from them and allotting rooms. After enquiry all the above three persons were brought to the Police Station and handed over them to Station House Officer, L.B. Nagar Police Station for taking necessary action.

5. Heard learned counsel for the petitioner and the learned Public Prosecutor for the respondent.

6. The main contention of the petitioner is that Section 3, 4 and 5 of the Prevention of Immoral Traffic Act (PIT Act), 1956 does not cover the custom the petitioner. In support of his contention, the learned counsel for the petitioner placed reliance upon a decision of this Court in **Z.Lourdiah Naidu and another Vs. State of Andhra Pradesh**¹, wherein, this Hon'ble Court held that Section 3 of the Act deals with the punishment for keeping a brothel or allowing the premises to be used as a brothel house. Section 4 of the Act deals with the punishment for living on the earnings of prostitution and Section 5 of the Act deals with the procurement, inducement or inducing for a person for the sake of prostitution.

7. Admittedly, the Sub Inspector of Police, LB Nagar Police Station filed a suo-moto case against the petitioner – Accused No.3 for the offences under Section 3,4, and 5 of Prevention of Immoral Traffic Act 1956. Section 3,4, and 5 of the said Act reads follows:

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the

¹ 2013(2)ALD (Cri.)393 (AP)

offence, shall become void and inoperative with effect from the date of the said conviction.

Punishment for living on the earnings of prostitution.—

(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of²⁰ [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both²¹ [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years].

[(2) Where any person over the age of eighteen years is proved —

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).]

Procuring, inducing or taking 1[person] for the sake of prostitution.—

(1) Any person who—

(a) procures or attempts to procure a²³ [person], whether with or without²⁴ [his] consent, for the purpose of prostitution; or 1[person], whether with or without 2[his] consent, for the purpose of prostitution; or"

(b) induces a²³ [person] to go from any place, with the intent that²⁵ [he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or 1[person] to go from any place, with the intent that 3[he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or"

(c) takes or attempts to take a²³ [person], or causes a²³ [person] to be taken, from one place to another with a view to²⁴ [his] carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a²³ [person] to carry on prostitution, 1 [person] to carry on prostitution,"²⁶ [shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section,—

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;]²⁷ [***]

(3) An offence under this section shall be triable—

(a) in the place from which a²³ [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such²³ [person] is made; or 1 [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such 1 [person] is made; or"

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

8. As rightly argued, Section 3, 4 and 5 basically deals with the persons who keep a brothel house and or allowing the premises to use as brothel house and lives on the earnings of the prostitution and procurement, inducement or inducing for a person for the sake of prostitution. Therefore, there is any amount of force in the submission of learned counsel for petitioner that the petitioner cannot be treated as

offender under Section 3, 4 & 5 of the PIT Act. This aspect was no more *res integra* since at least two judgments of this High Court i.e. **Goenka Sajan Kumar Vs. The State of A.P. and Z.Lourdiah Naidu Vs. State of Andhra Pradesh** establish the same. Therefore, criminal proceedings against the petitioner for the offence under Section 3,4 and 5 of PIT Act are not doubt liable to be quashed.

9. However, that is not end of the matter. A perusal of the charge sheet would show that the police, while charge sheeting petitioner/A3 for the offences under Sections 3,4 and 5 of the PIT Act, surprisingly, not charge sheeted under Section 370A IPC, which reads as follows:

“Section 370A – Exploitation of a trafficked person.

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.

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.

10. 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. Therefore, Section 370 A takes in its fold the customer also. So, despite the police charge sheeting petitioner/A3 only for the offence under Section 3 & 4 of PIT Act and the Committal Court accepting the same, it is evident from the charge sheet that the Petitioner/ A3 is, *prima facie*, liable for charge under Section 370A,

though not under Section 3 & 4 of PIT Act with which he was charge sheeted.

11. Therefore, accordingly, the Section 3 of the PIT Act deals with punishment for keeping a brothel or allowing the premises to be used as a brothel house and the said provision has been invoked by the police to the A-1, who is running a Lodge and allowed A2 and A3 for indulging in sexual act with Kumari Kalpana.

12. Section 4 is meant to punish the people living on the earnings of prostitution and that a person who is visiting the brothel house would not be covered by the Act. Section 4 of the Act would be attracted only if a person knowingly lives on the earnings of the prostitution of any other person. The activity carried out in a given premises will amount to prostitution within the meaning of Section 2 of the Act only if sexual abuse by exploitation of the person is done for commercial purpose.

13. Similarly, in the case of **Goenka Sajan Kumar Vs. State of A.P. rep. by Public Prosecutor, High Court of A.P., Hyderabad**, this Court held that Section 4 is meant to punish the people, living on the earnings of prostitution and that a person who is visiting the brothel house would not be covered by the Act. Similar view was taken by this Court in **Z.Lourdiah Naidu Vs. State of Andhra Pradesh (1) 2014 (1) ALD (CrI.) 322 (A.P.) = 2013 (2) ALD (CrI.) 393 (A.P.)** and also held that Section 3 of the Act imposes punishment for maintaining a brothel house or allowing premises to be used as a brothel house. Section 4 imposes penalty for living on the earnings of prostitution. **Section 5 deals with** the procurement, inducement or enticing for a person for the sake of prostitution. Section 6 of the Act speaks about detaining a person in the premises, where prostitution is carried out.

14. The Hon'ble court, in the above case, ultimately held that none of these sections speak about punishment to the customer of a brothel house. Admittedly, the petitioner herein does not fall under the provisions of the Section 3 to 7 of the PIT Act, as the petitioner was not running a brothel house nor did he allow his premises to be used as a brothel house. The petitioner is not alleged to be living on the earnings of prostitution. It is also not the case of the prosecution that the petitioner was procuring, inducing or inducing any person for the sake of prostitution nor is it the case of the prosecution that any person was earning on the premises where prostitution is carried out.

15. Similarly, the subsequent decision in the case of **S.Naveen Kumar @ Naveen vs. The State of Telangana, rep. by Public Prosecutor, High Court, Hyderabad** cases referred reported in 2014 (2) ALD (CrI.) 264 and 2013 (2) ALD (CrI.) 393 the Hon'ble High Court relying on cases (1) 2014 (1) ALD (CrI.) 322 (A.P.) = 2013 (2) ALD (CrI.) 393 (A.P.), held that Section 370 A takes in its fold the customer also. So despite the police charge sheeting petitioner only for the offence under Section 3 and 4 of the PIT Act and the Committal Court accepting the same, it is evident from the charge sheet that the petitioner therein is *prima facie* liable for charge under Section 370 A, though not under Section 3 & 4 of the PIT Act with which he was charge sheeted.

16. Further held that the High Court in its inherent powers under Section 482 of Cr.P.C. while quashing the proceedings against the petitioner for the offences under Section 4 of PIT Act can direct the committal court to take cognizance of offence under section 370A IPC against him.

17. In the case of **Z.Lourdiah Naidu and another Vs. State of Andhra Pradesh** referred (supra 1) a charge sheet is filed against the petitioners and two others for the offences punishable under Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 and in the said case A1 and A2 are brothel organisers and both of them are running a brothel house in Flat No. 7A, Dhruvathara Apartment, Somajiguda, Hyderabad. The said premises was taken on rent by A1. On collection of an amount of Rs.1,000/- from each customer, the accused used to send them to the guest house and out of the said amount a sum of Rs.300/- is said to have been paid to the victim girl. Thus, A1 and A2, therein are earning easy and illegal money by running a brothel house who are also comes under Section 3, 4 and 5 of the PIT Act.

18. In the case of **Goenka Sajan Kumar Vs. State of A.P. rep. by Public Prosecutor, High Court of A.P., Hyderabad** relying on the judgment of **Z.Lourdiah Naidu and another Vs. State of Andhra Pradesh** held that the petitioner therein does not fall under the provisions of Sections 3 to 7 of the Act, wherein the petitioner is one of the customers of the brothel house and not a person running the Brothel house or acting as a pip for the personnel in the brothel house. The Court in the above case, while quashing the proceedings against the petitioner for the offences under section 4 of the Act directed the Committal Court to take cognizance of the offence under Section 370 A I.P.C.

19. In the present case, the facts are different. On 28.04.2010, at 05.45 hours, the Sub Inspector of Police, L.B. Nagar, on receiving credible information that the prostitution is going on in Padma Vamshi

Lodge, run by A-1, after obtaining search proceedings from ACP, Saroonagar for conducting search, and securing panchanamadars by name Sri Shanaz and Sri Mohd. Jani, conducted raid on the Lodge. On seeing police personal, the owner of the Lodge - A1 escaped and on search in the lodge, in Room NO. 104, they found Kumari Kalpana alias Sandya and petitioner and another one by name Suram Raj Kumar. On enquiry, they informed that both have engaged Kumari Kalpana for Rs.300/- and taken her to Lodge of A1 for sexual intercourse. They booked room No.104 for Rs.400/- towards rent for two hours. Therefore, in the instance case it is the petitioner and Suram Raj Kumar engaged one Kalpana alias Sandhya for Rs.300/- and took room No.104 in A1 Lodge on a rent of Rs.400/- for two hours.

20. Section 5 of the PIT Act deals with the procurement, inducement or inducing for a person for the sake of prostitution. The specific and clear assertion in the FIR and charge sheet against the petitioner is that the petitioner induced Kumari Kalpana and procured her on payment of Rs.300/- for sexual intercourse. Accordingly, they took a room in the lodge of A1 by paying rent of Rs.400/- for two hours.

21. It is pertinent to note that in the wake of gang rape of Nirbhaya in Delhi which arose an unprecedented public furore, Government considered it fit to drastically amend several provisions of IPC and in that direction appointed a Committee under the Chairmanship of late Justice J.S. Verma, the Former Chief Justice of India. The Committee after interacting cross sections of stake holders submitted its detailed report suggesting amendments and introduction of various provisions in penal laws like IPC, Cr.P.C., Evidence Act etc. Consequent upon the said report sub-clause (2) of Section 370 IPC was amended and Section 370

A IPC was introduced. Having regard to the avowed object with which report was submitted and amendments and new provisions were introduced in several acts, it cannot be presumed for the moment that Legislators considered customers as an innocent victim in the flesh trade. Therefore, Section 370 A takes in its fold the customer also. So, despite the police charge sheeting petitioners only for the offence under section 3 and 4 of PIT Act and the Committal Court accepting the same, it is evident from the charge sheet that the petitioner is prima facie liable for charge under Section 370 A of I.P.C.

22. Relying on unreported decision in the case of **S.Naveen Kumar @ the State of Telangana** this Court quashed the proceedings against the petitioner therein for the offences against the petitioner under Section 4 and 3 of PIT Act, directing the Committal Court to take cognizance under Section 370 A IPC against the petitioner. Accordingly the decision in the case of **Z.Lourdiah Naidu and another Vs. State of Andhra Pradesh and Goenka Sajan Kumar Vs. State of A.P. rep. by Public Prosecutor, High Court of A.P., Hyderabad** have no application in the present case.

23. Now, the crucial question is whether the High Court in its inherent power under Section 482 Cr.P.C. while quashing the proceedings against the petitioner - A3 for the offence under Section 3,4, and 5 of PIT Act can direct the Committal Court to take cognizance of offence under section 370 A IPC against him.

24. 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 of I.P.C.

25. In the result, while quashing the proceedings in CC 333/2010 on the file of III Metropolitan Magistrate, Ciberabad, L.B.Nagar, under Section 3,4 and 5 of PIT Act against the petitioner-A3, learned Committal Magistrate is directed to take cognizance under Section 370A IPC against the petitioner – A3.

26. This Criminal Petition is accordingly disposed of. As sequel. Miscellaneous petitions pending, if any, shall stand closed.

N.BALAYOGI, J

19.02.2018.

JR

