

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8348 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.145 of 2014, pending on the file of Judicial Magistrate of First Class, Thorrur, Warangal District, for the offences punishable under Sections 3, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 (for short 'the Act').

The 2nd respondent is the complainant. On the basis of the complaint lodged by the 2nd respondent, the police registered Crime No.321 of 2013 of Thorrur Police Station for the above sections and issued FIR.

During investigation, LWs1 to 10 were examined and recorded their statements and concluded that there is *prima facie* material to proceed against the petitioner.

As per the material on record, the investigation discloses that the petitioner invited Maloth Kavitha D/o Veeraiah, R/o Mucherla of Hasanparthy Mandal @ Bhukya Sujatha D/o Bojya, 21 years, Lambada, trainee ANM in Teresa Institute at Mahabubabad with whom he had acquaintance and she was in financial problems and also not enough money to her to prosecute her studies. Taking advantage of her financial problems, the petitioner waiting for an opportunity and invited her to have sexual intercourse, finding that it is a right time to enjoy sex with Maloth Kavitha (LW.5) and offered money to her for participating in sex, upon which she came to Thorrur Grampanchayat Building on 17.10.2013 at mid night and stayed in Grampanchayat Building and petitioner and 2nd respondent engaged in sexual intercourse. On receipt of information from the villagers, the police raided and found the accused and LW.5 in the

Grampanchayat office room in a compromise position. In the presence of mediators, police arrested and examined them, observed scene of offence, found incriminating material and collected the same under the cover of mediators report. Thus, the petitioner found in sexual intercourse with Maloth Kavitha in the Grampanchayat Office, which is a public office, taking advantage of his status as Surpanch, having ever control over the building.

The present petition is filed on the ground that the petitioner never committed such offence and none of the allegations would not attract the offence punishable under Sections 3, 5 and 7 of the Act even if the allegations made in the complaint are accepted on its face value and that the registration of crime against the petitioner is contrary to the principles laid down in **N.Naveen Kumar v State of Tenangana**¹.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition while contending that in view of the judgment in **N.Naveen Kumar's case** referred supra, the prosecution against the petitioner is not maintainable and prayed to quash the proceedings.

Learned counsel for the Public Prosecutor opposed the petition on the ground that the material collected during investigation is sufficient to proceed against the petitioner for the above offences.

In view of the rival contentions, the point that arises for consideration is:

Whether the allegations made in the charge sheet are accepted on its face value constitute the offences punishable under Sections 3, 5 and 7 of the Act, if not whether the proceedings against the petitioner in C.C.No.145 of 2014, pending on the file of Judicial Magistrate of First Class, Thorrur, Warangal District be quashed?

¹ 2015 Law Suit (Hyd) 274

Undisputedly, the petitioner is Sarpanch of the Grampanchayat, Thorrur and he is having control over the Grampanchayat building and the petitioner was found in compromise position with LW.5 and the police also collected incriminating material from the scene of offence, which was narrated in the charge sheet. Therefore, the police filed charge sheet basing on the material collected from the scene of offence.

The offence allegedly committed by the petitioner is Section 3 of the Act, which deals with punishment for keeping a brothel or allowing premises to be used as a brothel. (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees. (2) Any person who, (a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, (b) being the owner, lessor or landlord of any premises 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 is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel.

Thus, in view of Clause 2(a) and (b) of the Act, the person who is in charge of the premises, used the premises as brothel is liable for punishment under Section 3 of the Act.

The word 'brothel' defined under Section 2(a) of the Act and it includes any house, room or place or any portion of any house, room, or

place, which is used for purposes for the gain of another person or for the mutual gain of two or more prostitutes.

Here, in this case LW.5 was engaged for sexual intercourse on payment of Rs.1,000/- by the petitioner and using the premises i.e. Grampanchayat Office for engaging sexual intercourse with LW.5 and therefore, the offence allegedly committed by the petitioner would fall within Section 3(2) of the Act. Thus, the allegations made in the complaint coupled with the material collected during investigation *prima facie* constitute offence punishable under Section 3 of the Act.

The other offence allegedly committed by the petitioner is punishable under Section 5 of the Act, which deals with procuring, inducing or taking person for the sake of prostitution.

(1) Any person who—

(a) procures or attempts to procure a ²³ [person], whether with or without ²⁴ [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 a ²³ [person] to go from any place, with the intent that ²⁵ [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 a ²³ [person], or causes a ²³ [person] to be taken, from one place to another with a view to ²⁴ [his] carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a ²³ [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.

Thus, the word procuring or inducing a person for the purpose of prostitution is an offence punishable under Section 5 of the Act. Here, in the present case, the petitioner invited LW.5 to participate in sexual intercourse with him and on payment of Rs.1,000/-. This act would directly *prima facie* fall with Section 5 of the Act. Therefore, the allegations made in the complaint would attract the offence punishable under Section 5 of the Act.

The other offence allegedly committed by the petitioner is punishable under Section 7 of the Act. Section deals with punishment for carrying prostitution in public premises. Public place is defined under Section 2(h) of the Act as any place intended for use by or accessible to, public and includes public conveyance. Here, the scene of offence is Grampanchayat Office, which is public place accessible to public. Hence, enjoying sexual intercourse in the Grampanchayat office on payment of Rs.1,000/- to LW.5 would fall within Section 7 of the Act. This statement

recorded under Section 161(3) Cr.P.C. by investigating officer supports that the petitioner committed offence punishable under Section 7 of the Act, *prima facie*. Therefore, I find no ground to quash the proceedings for the offences punishable under Sections 3, 5 and 7 of the Act.

Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions, if any, in this Criminal Petition shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J

Date: 06.07.2018.
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