

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**Criminal Petition No.9177 of 2018****ORDER :**

The petitioner-Vineeth Tulsian, a businessman is A.5 among 5 accused is seeking to quash the proceedings in Cr.No.498 of 2018 of Pet Basheerbad Police Station registered based on panchanama of the raid conducted on 31.07.2018 night by the complainant-Inspector of Police along with staff, for the offences punishable u/sec.370IPC and Sections 3 to 5 of the Immoral Traffic Prevention Act, 1956 (for short, 'the Act').

2. The sum and substance of the accusation in panchanama and remand report dt.01.08.2018 of the A.2 to A.5 by showing the A.1 in abscondence by referring 12 witnesses including L.Ws. 1 and 2-panch witnesses to the seizure with disclosure by the accused persons, the L.Ws. 3 to-6 victim ladies (majors), the L.Ws. 7 to 11 are the Police Constables, Head Constable and other Inspector who assisted to the L.W.12- Investigating Officer who conducted raid, registered the crime and investigated and filed charge sheet is that on 31.07.2018 at about 7.00 P.M., the complainant-Investigating Officer received credible information of business of prostitution is going at M/s. ASP WELLNESS SAPTA SPA, H.No.3-10/3, Sharma Lane, Kompally under the guise of massage/spa and secured 2 panch witnesses- LWs.1 and 2 and along with his staff went to said premises and noticed A.2-Anudeep was present at the reception and the complainant informed him of the object of their raiding and asked to co-operate for search. The A.2 made disclosure of him working as receptionist in the massage centre run by A.1-Adithya with his assistance the prostitution business under its cover by bringing sex workers from the villages and calling customers for the past few days. The A.3 to A.5 referred as customers visited the Centre to have sexual joy by paying money of Rs.2,500/- each and they selected L.Ws. 4 to 6 to have sexual joy and they

were about to move for the sexual act, they caught hold of them redhanded and the sex workers L.Ws. 3 to 6 also corroborated the version from their statements and thereby the amount of Rs.14,000/-, three cell phones viz: ASUS, SAMSUNG WHITE COLOUR, SAMSUNG DUOS from A.2; Rs.4,000/- cash from L.W.3-sex worker; Rs.4,500/- cash and SAMSUNG phone from another sex worker-L.W.4; Rs.3,500/-; a NOKIA cell phone from another sex worker-L.W.5; Rs.4,000/- cash and a NOKIA phone from another sex worker-L.W.6; one I-phone from Praveen Kumar-A.4; Samsung Sky blue colour phone from A.3-P.V.Janardhan Reddy; one more I-phone from A.5-Vineeth Tulsian-the petitioner and 2 Kohinoor condom packets, from reception, used condoms-6 from the dust bins were seized under the cover of panchanama, from recording statements of victims and proceeded to police station and registered the crime for the offences supra and arrested the accused and submitted to judicial custody and the investigation revealed that the A.1 in abscondence is the main person running prostitution business under the guise of SPA Centre with the services of A.2 to which the A.3 to A.5 customers as referred supra. The A.5-petitioner herein obtained regular bail on 17.08.2018 from Addl.Metropolitan Sessions Judge, Cyberanad in CrI.M.P.No.3322 of 2018 where it is observed that it is not the allegation of A.5 is running brothel house or procuring women for prostitution and living by their earnings but he is one of the customers found in the raids and Sections 3 to 5 of the Act have no application against him. In **Arjun rao Vs. State of Andhra Pradesh** in CrI.M.P.No.1786 of 2013 and batch, dt.22.05.2013, this Court another Bench observed that among Sections 3 to 7 of the Act, Section 3 deals with the punishment for keeping a brothel or allowing premises to be used as a brothel; Section 4 deals with punishment for living on the earnings of prostitution; Section 5 deals with procuring, inducing or taking a person for sake of prostitution. The prostitution is defined in Section 2(f) of the Act to mean sexual exploitation or abuse of

persons for commercial purposes, and the expression 'prostitute' shall be construed accordingly. It was a case where sex workers are made as accused were acquitted as victims and not be shown as accused for punishment.

3. The contentions in the quash petition by referring to the above among others that none of the offences even on face value applicable against the petitioner-A.5 to sustain the crime proceedings, leave about the person who conducted the raid and investigated the case after registration of the crime is one and the same no way sustainable.

4. The learned Public Prosecutor representing the respondent-State who opposed the petition averments submits that there is nothing to quash the proceedings and there is prima facie accusation against the petitioner-A.5 along with the A.1 to A.4 and sought for dismissal.

5. The learned counsel for the petitioner referred to another single judge expression of this Court in **Mohd.Shaheed Vs. State of Telangana** in CrI.P.No.16593 of 2014 dt.21.01.2015 referring to **Goenka Srujan Kumar Vs. State of Andhra Pradesh** and **Z.Lourdiah Naidu Vs. State of Andhra Pradesh**, where it is observed only with reference to the Sections 3 to 5 of the Act that in the two cases the accused were customers in a brothel house and the proceedings quashed against them saying those provisions are not applicable against them and thereby for the petitioner-A.5 therein Mohd. Saheed, the petition was allowed saying the Sections 3 to 5 of the Act has no application as per the expressions supra.

6. The learned counsel for the petitioner placed reliance on 3 more single judge expressions of the Karnataka High Court viz; in **Hampanagouda @Pampanagouda Vs. State** in CrI.P.No.200649 of 2017,dt.13.06.2017 where it is observed that the customers involved in the prostitution activity cannot be covered by Sections 3 to 5 of the Act, which is also reiterated in

Laxmikantharaju Vs. State in CrI.P.No.6283 of 2017 dt.27.02.2018. Coming to the other expression in **Mohd.Rafi Vs. State**¹ on the scope of Section 370 IPC and Sections 3 to 7 of the Act. The panchanama based on which the crime registered against the petitioner does not give a clue of his indulgence with the offence but for only found present in the place of the occurrence and therefrom observed none of the offences u/sec.370IPC and Sections 3 to 7 of the Act are applicable against him even he was found at the place of occurrence with a customer of the brothel to charge as A.4. So far as Section 370IPC is concerned, which deals with the trafficking of the persons reads as follows:-

7. Section 370 of the Indian Penal Code-Trafficking of persons:

1. Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—
 - a. using threats, or
 - b. using force, or any other form of coercion, or
 - c. by abduction, or
 - d. by practicing fraud, or deception, or
 - e. by abuse of power, or
 - f. by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harbored transferred or received, commits the offence of trafficking.

Explanations:

1. The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.
 2. The consent of the victim is immaterial in determination of the offence of trafficking.
2. Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
 3. Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

¹ 2005 OSCJ online Karnataka 1328

4. Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
5. Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.
6. If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
7. When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

8. Here the allegation against the petitioner-A5 similar to A3&A4 is that they were present at the SPA Centre for alleged purpose to have sex with the respective victims-LWs.4 to 6, secured them along with A1&2 who are running the prostitution business in the SPA Centre and the deal was settled.

9. In Criminal Petition Nos.2572 of 2014 and batch, dt.05-01-2016 in **Sahil Patel and others vs. The State of Andhra Pradesh** rep.by its Public Prosecutor, High Court, Hyderabad, referring to the previous expressions, it was held by this Court that no doubt, from the decisions supra, Sections 3 and 4 of the Act no way applicable so far as the customers concerned. If any of them indulge in sexual enjoyment with the sex worker respectively and for any of them keeping or allowing premises as brothel house or habitually found in the company of sex workers or living on that earnings or detaining any person to carry prostitution or such premises within the notified and prohibited area it attracts any of Sections 3 to 11 of the Act besides sections 370 and 370-A of IPC. The alleged occurrences were after the Amendment by Act 13/2013 to the IPC and the Schedule of CrPC which came into force with effect from 03.12.2013 incorporating Sections 370 and 370-A of IPC. Needless to say the same is prospective in operation as

observed by this Court in CrI.P.No.4193 of 2015 dated 20.07.2015 between **Saleh Mahfooz Vs. State of Telangana**. As observed in Saleh Supra, once Sections 370 and 370-A IPC apply, leave about any application of Section 371 against any of the accused that too when the investigation is pending, there are no grounds to quash the respective crime proceedings much less to stay investigation.

10. However, the fact remains that, the detecting officer as complainant of the crime and the person who registered the crime and investigating is one and the same which is per se not sustainable as per the latest constitution bench expression of the Apex Court in **Mohan Lal Vs. State of Punjab**².

11. In the result, the Criminal Petition is allowed by setting aside the proceedings in Cr.No.498 of 2018 of Pet Basheerbad Police Station to the extent by reverting the clock back to the stage of registration of the crime so that the case can be investigated by any other competent police officer who can refer any earlier investigation material in the investigation to be conducted afresh and therein to consider how far any of the penal provisions of Sections 370, 370-A and 371 IPC and Sections 2 to 11 of the Act whether apply and if so which of those and against whom and on what basis. All future defences are left open.

Consequently, miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:31.12.2018

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² AIR (2018) SC 3853