

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 2104 of 2019

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C. seeking quashing of the proceedings in P.R.C.No.25 of 2018 on the file of the XI Additional Chief Metropolitan Magistrate at Secunderabad.

2. A charge sheet came to be filed against the petitioner/accused No.2 and others for the offences punishable under Sections 370, 370 (A) IPC and Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, with an allegation that on 01.07.2018 at about 20.00 hours, on credible information that one Smt. Mudavath Lakshmi @ Priya (A1) is organising brothel house situated at Flat No.22, Beema Sadan, Manovikas Nagar, Old Bowenpally, Secunderabad, the Detective Inspector of Police, after obtaining permission from the concerned authority, proceeded to the said place, along with staff and witnesses and on search, found few ladies and one male person (petitioner herein) in the Flat. On enquiry, the male person stated that he came to the portion for doing sexual act by paying money to the organiser. On their confession, it came to know that accused No.1 was running the brothel house in the said premises and she brought sex workers (LWs.3 and 4) and sent L.W.3 to the petitioner (A2), who is a customer, by taking Rs.2,500/-. After following the procedure prescribed, the police

registered a case in Crime No.221 of 2018 for the offences punishable under Sections 370, 370(A) I.P.C. and Sections 3, 4 and 5 of Prevention of Immoral Traffic Act . After completing the investigation, the police filed charge sheet against the accused, which was taken cognizance as P.R.C.No.25 of 2018.

3. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondents.

4. Learned counsel for the petitioner/accused No.2 submits that even accepting the allegations in the charge sheet to be true, the petitioner/accused No.2 is only a customer and not an organizer of brothel house. He further submits that Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act would not be attracted to the customers, who were present at the venue, where the alleged brothel house has been running. Hence, the proceedings against the petitioner are liable to be quashed.

5. Learned Additional Public Prosecutor would submit that petitioner/accused No.2 is liable for charge under Section 370A I.P.C and prayed to dismiss the petition.

6. An identical issue came up for consideration before this Court in *S.Naveen Kumar v. The State of Telangana*¹ wherein this Court, while quashing the proceedings against the customer under Section 4 of the Immoral Traffic (Prevention) Act, directed the

¹ (2015) 2 ALD (CrL.) 156 (AP)

Magistrate to take cognizance under Section 370-A IPC against the customer.

7. Further, the petitioner/A2 was also charge sheeted for the offences punishable under Section 370 and 370-A of I.P.C.

8. Section 370 of I.P.C. deals with trafficking of person, which reads as under:

Section 370 - Trafficking of person: (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by —

1. using threats, or
2. using force, or any other form of coercion, or
3. by abduction, or
4. by practising fraud, or deception, or
5. by abuse of power, or

6. 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, harboured, transferred or received, commits the offence of trafficking. The word "exploitation" is explained in explanation (1) of same section, which includes any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs and such person is liable to be prosecuted under the provisions of Section 370 of I.P.C.

9. Here, the petitioner/accused No.2 was not the person, who trafficked any person, for any of the purposes referred to above, but he was only a customer. Therefore, he is not liable for prosecution for the offence punishable under Section 370 of I.P.C. however, he is

liable to be prosecuted for the offence punishable under Section 370-A (2) of I.P.C.

10. In view of the judgment referred to above and having regard to the fact that the petitioner/accused No.2 is only a customer, the proceedings against the petitioner/accused No.2 for the offences punishable under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act and under Section 370 of I.P.C. are liable to be quashed while permitting the Magistrate concerned to proceed further against the petitioner/A2 for the offence punishable under Section 370 A (2) of I.P.C.

11. In the result, the Criminal Petition is allowed in part. The proceedings against the petitioner/accused No.2 in P.R.C.No. 25 of 2018 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad, registered for the offences punishable under Sections 370 of I.P.C. and under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act only are hereby quashed while permitting the Magistrate concerned to proceed further against the petitioner/A2 for the offence punishable under Section 370 A (2) of I.P.C.

12. As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

JUSTICE G. SRI DEVI

09.09.2019
Gkv/Gsn.

