

*** THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

+CRIMINAL PETITION No.12656 OF 2018.

%05-02-2019

D.Ramu

...Petitioner/A-3

Vs.

\$ The State of Telangana

....1st Respondent

\$ The Detective Inspector of Police

....2nd Respondent/De facto
complainant

!Counsel for the Petitioner: Mr.Nomula Srinivas

^Counsel for the Respondents : Learned Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

1. 2015 (1) ALT (CRI.) (A.P) 318 (S.B.)
2. 2014 (1) ALT (CRI.) (A.P) 322 (S.B.)
3. 2015 (1) ALT (CRI.) 9A.P.) 85 (S.B.)
4. Criminal Petition No.7056 of 2014
5. Criminal Petition No.2187 of 2018
6. Criminal Petition No.7110 of 2011
7. Criminal Petition No.5808 of 2016
8. Writ Petition No.56504 of 2015 (GM-RES)
9. Criminal Petition No.9682 of 2016
10. Criminal Petition No.8055 of 2016
11. Criminal Petition No.200782 of 2016.

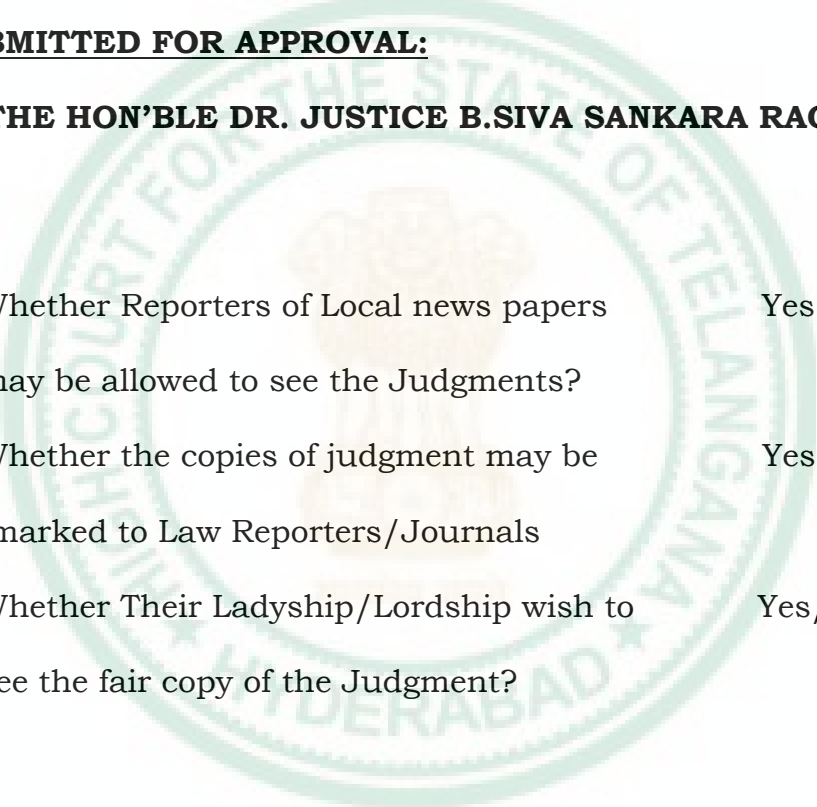
HIGH COURT FOR THE STATE OF TELANGANA, AT HYDERABAD**MAIN CASE NO: Crl.P.No.12656 OF 2018****Between:**

D.Ramu

.. Petitioner**And**

The State of Telangana and another

.. Respondents**DATE OF JUDGMENT PRONOUNCED: 05.02.2019****SUBMITTED FOR APPROVAL:****THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

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1. Whether Reporters of Local news papers
may be allowed to see the Judgments? Yes/No
 2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**CRIMINAL PETITION No.12656 OF 2018****ORDER:**

The petitioner is A-3 among three accused in Crime No.258 of 2018 of Bowenpally Police Station, Hyderabad, dated 02.08.2018, for alleged occurrence at Flat No.G-4, Mehara Dweepam, RR Nagar, Road No.6, Old Bowenpally, Secunderabad, at about 23.00 hours before midnight of 01.08.2018, registered for the offences punishable under Sections 370 & 370-A of Indian Penal Code (for short, 'IPC') and Sections 3, 4 & 5 of the Immoral Traffic (Prevention) Act, 1956 (for short, 'ITP Act').

2. The report of Mr.S.Sudheer Kumar, Detective Inspector of Police, Bowenpally Police Station, Secunderabad, along with enclosures covered by Search proceedings, confession-cum-seizure Panchanama of accused persons and seized property as per Panchanama, addressed to the Station House Officer, Bowenpally Police Station, in registration of the crime at 1.30 hours i.e., immediately after 01/02.08.2018 midnight, reads that few hours before, though mentioned as 01.07.2018 instead of 01.08.2018, night at about 10.00 p.m., he along with staff present at Bowenpally Police Station, received some credible information of one lady by name Podicheti Kavitha is organising a brothel house at Flat No.G-4, H.No.7-35/2, Mehara Dweepam, RR Nagar, Road No.6, Old Bowenpally, Secunderabad, and believing the information as authentic, immediately he appraised the same to his superior officers and on their oral instructions to conduct raid in said premises summoned two mediators S.Ram Kishan Rao and P.Srinivas and explained them about the information received and requested them to act as mediators for conducting raid and from their agreed to accompany, they proceeded and he drafted the search proceedings in the presence of the mediators

at 22.30 hours and as any delay in obtaining a search warrant from the Court may cause disappearance of accused as well as material evidence. He with the panchas and along with Sub-Inspector of Police-E.Raghuveer Reddy, Constable-M.V.Ramana Murthy, Constable-J.Praveen Kumar, Constable-M.Ramesh and Woman Constable-Kumari Maheshwari, reached the Flat No.G-4 supra and on knocking the door, one lady opened the door. He revealed his identity and purpose of visit to conduct raid and on enquiry, she revealed her name as said Podicheti Kavitha, organiser of brothel house, resident of Gungal Village, Yacharam Mandal, Ranga Reddy District, and tenant of this portion (G-4, Mehara Dweepam supra) and when served copy of the search proceedings on her and obtained her acknowledgement and on observation, the flat is in the premises of ground floor and the flat consisting of a hall, two bed rooms, kitchen, bathroom/washroom and two bed rooms are found closed from inside and on knocking two bedroom doors, two ladies and two male persons opened the doors of each room and the ladies are found in obscene gesture and on enquiry, one of the lady, who is with gent, revealed her name as Shaik Faker Bee and stated her profession as Prostitution worker, resident of Pilli Darga, Site-3, Borabanda, and native of Bhanu Gudi, Kakinada, and the male person revealed his name as Joseph Vijay Chander of Sancharapuri Colony of New Bowenpally, Secunderabad, and another lady, who came from another bed room revealed her name as Smt. Mallikadas, W/o. Banti Das, resident of Part No.148, Jessore Road, Near Catholic Church Chayghoriya, West Bengal State, and the male person revealed his name as D.Ramu, S/o.D.Narayana, resident of Quarter No.3/L, KVS Airforce Station, Begumpet, and brought all of them into the hall at about 23.10 hours (11.10 p.m.) in the night and recorded the disclosure statement-cum-seizure Panchanama of accused persons and seized

Rs.2,000/- 5 unused condom packets and one cell phone from the accused Kavitha, one cell phone also from Joseph Vijay Chander and also seized one cell phone from Ramu in the presence of panchas and affixed signed panch chits on it and also rescued two victims supra, who stated engaged by the organizers for sexual exploitation with the customers supra by earning illegal profits and, therefore, producing the organizer of the brothel Podicheti Kavitha and two customers Joseph Vijay Chander and D.Ramu and the two victims supra and what is seized with particulars, to take action. It is therefrom after midnight of 01.08.2018 i.e., to say on 02.08.2018 at 1.30 hours, the crime was registered by Sub-Inspector of Police, Bowenpally Police Station, by name Vijay Kumar, who is different to the Detective Inspector S.Sudheer Kumar supra, as Crime No.258 of 2018, for the offences punishable under Sections 370 & 370-A of IPC and Sections 3, 4 & 5 of ITP Act.

3. The quash petition contentions of the petitioner (A-3) are that, particularly by reproducing so-called gist of the FIR supra in para 2, from paras 3 to 11 that on reading of the report in alleged commission of the offences, ingredients of the alleged offences do not attract, police registered a case on raid basing on so-called confessional statements of accused in the presence of stock mediators without obtaining any search warrant from concerned Magistrate, having forcibly entered and seized some material to prove their *bona fides* in registration of the crime and the petitioner (A-3) never involved in identical cases or any other case and he is nothing to do with alleged offences and only police registered the case for statistical purpose, he is staying in the same plot since long time and there is no complaint from general public though police people basing on information from unknown person, raided and registered the case and in these circumstances, unless the Court

intervene to quash the FIR, his entire family will suffer and he will face stigma in society and he is innocent and no way connected with the alleged offences for which the crime registered and the FIR would not lie to conduct investigation and even the police described him as a customer and customer shall not be prosecuted under the Immoral Traffic (Prevention) Act, 1956, even assuming for a moment he is a customer and the Investigating Officer, Sub-Inspector of Police, who registered the crime has no jurisdiction to investigate and it is averred as if he filed charge sheet though there is no charge sheet so far filed with the material and also from the submission of learned Public Prosecutor and in saying there is no useful purpose would be served in continuing proceedings against him and continuation of proceedings are abuse of process and to secure the ends of justice, the FIR proceedings are liable to be quashed. Thereby seeking to quash the proceedings.

4. Learned counsel for the petitioner/A-3, by reiterating the contentions, drawn the attention of the Court to the FIR and remand report, which is Part-I case diary in remanding the accused persons 1 to 3 arrested and produced before Court by citing therein 11 witnesses including the Detective Inspector, who is the person who has given the report in registration of the crime as L.W.10 and the Investigating Officer, who registered the crime and investigated the same as L.W.11 and the Police Cosntables-L.Ws.5 to 8 and another Sub-Inspector of Police, Bowenpally-L.W.9 besides the two victims L.Ws.3 & 4 and the Mediators to the Panchanama referred supra L.Ws.1 & 2.

5. Learned counsel for the petitioner also placed reliance upon the following expressions:

- (i) **Katamoni Nagaraju v. State of Telangana¹**
- (ii) **Z.Lourdiah Naidu and another v. State of A.P.²**
- (iii) **Goenka Sajan Kumar v. State of A.P., rep. by Public Prosecutor, High Court of A.P., Hyderabad³**
- (iv) **Single Judge expressions of Karnataka High Court**
 - (a) **in Criminal Petition No.7056 of 2014 in Shri Mohammed Rafi v. State of Karnataka;**
 - (b) **in Criminal Petition No.2187 of 2018 in Sarvan v. State of Karnataka;**
 - (c) **in Criminal Petition No.7110 of 2011 in Suraj v. State of Karnataka;**
 - (d) **in Criminal Petition No.5808 of 2016 in Sri Pravesh Chatri v. The State of Karnataka;**
 - (e) **in Writ Petition No.56504 of 2015 (GM-RES) in Mahesh Hebbar @ Mahesh v. The Station House Officer, Banaswadi Police Station, Bangalore;**
 - (f) **in Criminal Petition No.9682 of 2016 in Aswath @ Naveen v. State of Karnataka;**
 - (g) **in Criminal Petition No.8055 of 2016 in Raghavendra @ Raghu v. State of Karnataka; and**
 - (h) **in Criminal Petition No.200782 of 2016 in Shivaraj v. State of Karnataka.**

6. Learned counsel for the petitioner reiterated the contentions in saying with reference to the provisions and from the propositions, the crime proceedings are liable to be quashed.

7. Whereas it is the submission of the learned Public Prosecutor in opposing the petition that there is a *prima facie* accusation and the

¹ 2015 (1) ALT (CRI.) (A.P) 318 (S.B.)

² 2014 (1) ALT (CRI.) (A.P) 322 (S.B.)

³ 2015 (1) ALT (CRI.) 9A.P.) 85 (S.B.)

crime is at nasal stage and there are no grounds to quash the crime proceedings and thereby sought for dismissal of the quash petition.

8. Heard and perused the material on record.

9. Even from the quash petition, it is not his case that he was not found in the room of the house Flat No.G-4 of Mehara Dweepam, RR Nagar, his grounds referred supra, particularly from paras 4 & 5 of the material at page No.5, of which pages 1 to 5 contain the quash petition averments with grounds for the prayer, that he never involved in identical cases or any other case and he is nothing to do with alleged offences and only police registered the case for statistical purpose and he is staying in the same plot since long time and there is no complaint from general public though police people, basing on information from some unknown person, raided and registered the above case. In fact, in his disclosure statement, the address is Quarter No.3/L, KVS Airforce Station, Begumpet, and even in the quash petition cause title, his address is self-same. What he says from the grounds is he was staying in the plot, in fact G-4 is flat and the police having, through the mediators report, apprehended him from what the FIR speaks within no lapse of time and from the disclosure statement produced before the Court with remand report. *Prima facie* once it is not his specific case of he was not apprehended by the police at the G-4 premises as alleged within any room in the flat, the Court has to draw the presumption contemplated by Section 14 Illustration E of the Police Acts being a public servant duly performed by the petitioner was apprehended from the F-4, Mehara Dweepam, RR Nagar, flat supra where according to the police the women were found naked and the petitioner/A-3 is in one room, closed the door by locked from inside along with woman found naked. Once such is the case, there is a *prima facie* accusation that no

explanation for his presence in such a way to attract with some or other penal offence.

10. Coming to the expressions placed reliance referred supra in **Katamoni Nagaraju v. State of Telangana (1 supra)**, it has only dealt with the offence punishable under Sections 3 to 5 of ITP Act in saying a person found as a customer have been engaged in sexual act will not be covered by the provisions of Sections 3 to 5 of the ITP Act and coming to **Z.Lourdiah Naidu and another v. State of A.P. (supra 2)**, it is also in saying will not attract Sections 3 & 4 of ITP Act. Even in **Goenka Sajan Kumar v. State of A.P., rep. by Public Prosecutor, High Court of A.P., Hyderabad (supra 3)** also referring to the above, observed similarly of Sections 3 to 5 of ITP Act would not attract and coming to **Sarvan v. State of Karnataka (Criminal Petition No.2187 of 2018)** similarly held Sections 3 to 5 & 7 of ITP Act may not apply equally Section 373 IPC. Coming to **Shri Mohammed Rafi v. State of Karnataka (Criminal Petition No.7056 of 2014)**, held merely of Sections 3, 4, 5 & 7 of ITP Act and Section 370 IPC have no application and coming to **Suraj v. State of Karnataka (Criminal Petition No.7110 of 2011)**, it is also observed of Sections 3 to 5 & 7 of ITP Act have no application and in **Sri Pravesh Chatri v. The State of Karnataka (Criminal Petition No.5808 of 2016)**, it is also observed Sections 3 to 5 & 7 of ITP Act and Section 370 IPC have no application, and in **Mahesh Hebbar @ Mahesh v. The Station House Officer, Banaswadi Police Station, Bangalore (Writ Petition No.56504 of 2015 (GM-RES))**, it is also observed Sections 3 to 5 & 7 IPC have no application and in **Aswath @ Naveen v. State of Karnataka (Criminal Petition No.9682 of 2016)**, it is also observed Sections 3 to 5 & 7 of ITP Act and Sections 342 & 370 IPC have no application, and in **Raghavendra @ Raghu v. State of Karnataka (Criminal Petition**

No.8055 of 2016) it is also observed that Sections 3 to 6 of ITP Act insofar as the petitioner/A-8 have no application, for somebody doing a body massage to him and nothing beyond and in **Shivaraj v. State of Karnataka (Criminal Petition No.200782 of 2016)**, it is observed that Section 5(1)(a) of ITP Act has no application.

11. Even taken consideration these expressions undisputedly no way covered the offence punishable under Section 370-A amended IPC, which came into force with effect from 03.02.2013 by Act 13 of 2013 and for more clarity, Section 370-A amended IPC is reproduced hereunder:

“Section 370A:- Exploitation of a trafficked person

1. 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.
2. 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.”

12. From this, though Sub-section 1 relates to minor, sub-section 2, what is reproduced above speaks 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. The accused once allegedly found in the room by locking from inside with a lady in nude, it clearly shows that victim trafficked engaged by him for some sexual exploitation. Whether such is the case it may not be contended *prima facie* to Section 370-A IPC has no application and none of the decisions are valid in this regard, but for

relating to the other offences, as the crime is at nasal stage and police have to investigate and it is from the investigation material, if at all what provisions that are applied, leave about, they can add any of the other appropriate sections of law or delete any among those, it is not proper to quash the FIR proceedings from the *prima facie* accusation.

13. Having regard to the above, the Criminal Petition is dismissed. It is the after submission of the arguments when the Court taken up to pronounce the judgment, learned counsel for the petitioner disturbed the Court more than thrice by interfered with though it is time and again repeated to him he has no right to interfere not only in the course of dictating the order, he sought permission to withdraw, even the Court initially chosen to incline, he submitted again arguments, then the Court did not accord him permission to withdraw.

14. Having regard to the above, the Criminal Petition is dismissed. However, needless to say, it is the duty of the Court to render justice, that too to sub-serve the ends of justice to pass the orders. These observations will not prejudice the right of the accused if at all to impugn from the police final report with part-II case diary.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 5th February, 2019

Note: L.R. copy to be marked.

(B/o.)
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THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO



CRIMINAL PETITION No.12656 OF 2018

Date: 5th February, 2019

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