

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 163 of 2019

Shubhendu Mandal

Vs.

State of West Bengal & Anr.

For the Petitioner : Mr. A. K. Chowdhury

For the Opposite parties : Mr. Sudip Ghosh,
(State) : Mr. Bitasok Banerjee.

Heard on : 22.11.2022

Judgment on : 30.11.2022

Shampa Dutt (Paul), J.:

The Revisional application has been filed by the accused/petitioner praying for quashing of criminal investigation in Newtown Police Station Case No. 524/2018, Under Sections 3/4/5/6/7 of Immoral Trafficking (Prevention) Act, 1956.

That on 08.12.2018 between 23.15 to 23.30 hrs, while on duty, the opposite party no. 2, Inspector of Police, New Town, Police Station received a telephonic information from Bidhannagar Police Commissionate that illegal prostitution was going on inside a flat namely Sudarshan Vista, DF – 35, Kolkata- 156, under Newtown Police Station.

The premises also was found inhabited by one another male person who identified himself as Arjun Halder S/O Shyam Halder. On interrogation they disclosed that the room at the said premises have been used as a brothel by the above noted **Arjun Halder** and his another associate namely **Sankar Maity @ Raj** and very often he used to procure girls for sexual relaxation for male customers, and also admitted that the subjects viz. (i) **Diganta Bora** S/O Chittaranjan Bora, (ii) **Siba Kumar** S/O Padamanabhan, (iii) **Shubhendu Mandal** S/O Biswanath Mandal and (iv) **Pradip Ray** (21 years) S/O Bablu Ray is the customer and the ladies had been procured by him and **Sankar Maity @ Raj** for sexual relaxation of the male counterparts.

Articles and cash as per seizure list, prima facie supports the offences in the registered case. Four men including the petitioner were found in

“immodest” condition. One man namely Arjun Halder was running a brothel in the said premises with another person namely Shantanu Maity @ Raj and they procured the women for sexual relaxation of male customers. The time of raid and seizure is between 23.15 hrs to 23.40 hrs. The complainant on being prima facie satisfied that the place (place of occurrence) was used as a brothel for commercial sexual exploitation in exchange of money arrested the accused persons and filed this case under Section 3/4/5/6/7 of the Immoral Traffic (Prevention) Act, 1956.

The petitioner’s case is that he was relaxing and enjoying with friends when the opposite party no. 2 suddenly and without any warrant of arrest the petitioner and other named in the FIR, on seizure of all articles in his possession.

The petitioner denies the total allegation as made by the complainant in the above mentioned case.

Mr. A. K. Chowdhury Learned Counsel for the petitioner submits that the total investigation in this case is false and baseless and the investigation should not be permitted to continue.

The women (all adults) in the incident/case have made no allegations. One of the women present is a friend of the petitioner and as such the question of trafficking does not arise.

The offence alleged against the petitioner is totally false and the Sections under which the case has been registered are totally baseless and without any proof or evidence and the case has been filed only to harass the petitioner with ulterior motive and personal grudge.

As such the total case being false and fabricated, the first information report in this case should be quashed so that the investigation does not proceed.

Mr. Sudip Ghosh, Learned Counsel for both the opposite parties has submitted that there is sufficient materials in this case, for the with the investigation to proceed as a prima facie case of cognizable offence has been made out against the petitioner.

By filing this application the petitioner/accused is intentionally delaying the investigation thereby hampering the duty of the police, who is only carrying out the duties as laid down by the law. The said conduct of petitioner/accused is obstructing the process of law, intending to wipe out the evidence by efflux of time and delay.

The counsel for the opposite parties further submits that this is sheer Abuse of process of law and the revisional application should thus be dismissed.

Considering the submissions of the parties and the materials on record including the written complaint (First information report) it transpires that

from the place of occurrence **six women** (Aged 20 yrs to 37 yrs) were also recovered in presence of lady constables.

The Immoral Traffics (Prevention) Act, 1956 (here in after referred to the Act of 1956 defines :-

2(a) **“brothel”** includes any house, room [conveyance], or place or any portion of any house, room [conveyance], or place, which is used for purposes [of sexual exploitation of abuse] for the gain of another person or for the mutual gain of two or more prostitutes.

(f) **Prostitution** – Prior to 1986 amendment “prostitution” was defined to mean “the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression “prostitution” shall be construed accordingly under the new definition “prostitution” means the sexual exploitation or abuse of persons for commercial purposes. Thus, the present definition is not confined to the act of a female offering her body for promiscuous sexual intercourse with her, but includes sexual exploitation or abuse of a male for commercial purposes. According to Black’s Law Dictionary “prostitution is performing an act of sexual intercourse for hire, or offering or agreeing to perform an act of sexual intercourse or any unlawful sexual act for hire. The act of practice of a female of prostituting or offering her body to an indiscriminate intercourse with men for money or its equivalent”

Section 3 of the Act of 1956 lays down :-

3. Punishment for keeping a brothel or allowing premises to be used as a brothel. _

(1) Any person who keeps or manages, or acts or assist 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 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, or

(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,

shall be punishable on first conviction with imprisonment for a term which may extend to two years and 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 which may extend to five years and also with fine.

There being no statement/allegations in the written complaint showing that the ingredients in respect of the said Sections were present in respect of this petitioner, Section 3 of the Act of 1956 in prima facie not applicable.

Section 4 of the Act of 1956 lays down

4. Punishment for living on the earning of prostitution - (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of [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 both [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a terms of not less than seven years and not more than ten years].

None of the ingredient as required to constitute the said offence is prima facie alleged against the petitioner herein.

Section 5. Procuring, inducing or taking [person] for the sake of prostitution –

(1) Any person who –

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

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

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

(d) causes or induces a [person] to carry on prostitution; shree be punishable

Section – 6. Detaining a [person] in premises where prostitution is carried on –

(1) Any person who detains [any other person, whether with or without is consent,]

(a) In any brothel, or

(b) In or upon any premises with intent [that such person may have sexual inter course with a person who is not the spouse of such person] shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine;

Finally **Section 7. Prostitution in or in the vicinity of public places.** –

[(1) Any [person], who carries on prostitution and the person with whom such prostitution is carried on, in any premises –

(a) Which are within the area or areas, notified under sub-section-(3), or,

(b) Which are within a distance of two hundred meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend to three months].

The words used in Sections 5,6 and 7 the Act of 1956 requires contemplation while considering an application under Section 482 CrPC praying for quashing of the FIR and thereby the investigation which normally follows

The said words, including the ingredients therein to make out an offence under the said Sections have not been alleged in the written complaint in this case.

The specific allegation against the petitioner is that he was found in an “immodest” condition between 23.15 hrs to 23.40 hrs at the place of occurrence, which was being used as a ‘brothel’.

The allegations in the written complaint do not make out any ingredients required to constitute offences as laid down under Sections 3/4/5/6/7 of the said Act of 1956.

The Supreme Court in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (2021) SCC online SC 315** has laid down the guidelines to be followed by the High Courts while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India in para 80 of the said judgment as under:-

* * * * *

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

x) Save in exceptional cases where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the

parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

Keeping in mind the said guidelines and from the materials on record which includes the statement in the First information report/written complaint it is evident that the allegations against the present petitioner therein, clearly do not disclose the commission of any cognizable offence as alleged.

a) **Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022**, where in the Court held :-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”*

The Court while deciding the Case relied upon several precedents.

The Supreme Court says that, a quashing of a complaint/FIR should be an exception rather than an ordinary rule. The prosecution case before this Court is a case where it is clearly seen that no cognizable offence or offence of any kind is disclosed in the First Information Report and as such this Court cannot permit the said proceedings to continue and this is one of the said rare circumstances in which the prayer of quashing should be considered.

Having considered the aforesaid facts and circumstances of the case, if the present proceeding is allowed to continue, it would be sheer abuse of process of court and as such this is a fit case where, invoking the power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed.

Accordingly, **CRR 163 of 2019** is **allowed**.

The proceeding in Newtown Police Station Case No. 524 of 2018 under Section 3/4/5/6 of the Immoral Trafficking (Prevention) Act, 1956 is hereby quashed in respect of the petitioner Shubhendu Mandal and also Diganta Bera, Shib Kumar and Pradip Ray (all named in the FIR) in the interest of Justice as they also stand on exactly the footing as that of this petitioner though they have not preferred the revisional application.

The investigation will continue in respect of rest of the accused persons in Newtown, P.S. no. 524/2018.

No order as to costs. All connected applications stand disposed of.

Interim orders if any stands vacated.

Let a copy be sent to the trial Court for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)