

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 2363 of 2019

***Suresh Babu @ Arakkal Arjunan Suresh Babu
Vs.
The State of West Bengal & anr.***

For the Petitioners : Mr. Tusher Kanti Mukherjee
Mr. Abu Abbas Uddin

For the State : Mr. Madhusudan Sur
Mr. Dipankar Paramanick

Heard on : 6th June, 2022

Judgment on : 13th June, 2022

Ajoy Kumar Mukherjee, J.

1. This revisional application has been filed for quashing of the proceeding invoking power under section 482 of the Code of Criminal Procedure in connection with G.R. Case No.18 of 2019 corresponding to charge-sheet No.83 of 2019 dated 25.3.2019 arising out of Section E. Jorasanko Police Station Case No. 04 of 2019 dated 4.1.2019 under Sections 3/4/5/7/18 of the Immoral Traffic (Prevention) Act 1956 (in short, I.T.(P) Act) read with Section 120B of the Indian Penal Code presently pending before the learned 15th Metropolitan Magistrate at Calcutta and also for setting aside the order dated 21.3.2019 whereby the learned Additional Chief Metropolitan Magistrate had

taken cognizance against the present petitioner, namely, Suresh Babu @ Arakkal Arjunan Suresh Babu.

2. It is the specific case of the petitioner that the petitioner is a non-residential Indian businessman and in course of such business issues the petitioner visited Kolkata in the month of January, 2019. On 4.1.2019 the petitioner was having a backache and the petitioner was looking for a place where he can get a backache massage and had found a place on the internet and accordingly, the petitioner had reached the place where he found a glowing board read as the name and style of “Snowy Glow Family Saloon and Spa” situated at 131, C.R. Avenue, Kolkata-700073 for having a massage and accordingly, he was provided a room and a masseur. During the session suddenly a raid was conducted and the petitioner was informed by the police officer that the alleged place is involved with certain offences and the petitioner is required for the purpose of investigation. Accordingly, the petitioner along with other staff of the Spa were apprehended and taken to the local Jorasanko Police Station and subsequently, the petitioner was informed that he was arrested in connection with a police case registered against the said Spa for violation of said I.T.(P) Act. Thereafter on 5.1.2019 the petitioner who was accused No.3 along with co-accused persons were produced before the learned Additional Chief Metropolitan Magistrate at Calcutta and upon hearing, the petitioner was granted ad interim bail.

It is further contended that based on the aforesaid facts, Jorasanko Police Station Case No.4 of 2019 dated 4.1.2019 was registered for investigation and on completion of investigation the investigating officer

submitted charge-sheet being No.83 of 2019 dated 25.3.2019 and Ld. Magistrate has taken cognizance against present petitioner and other alleged persons under section 3,4,5,7, 18 of I.T.(p) Act read with section 120B of the Indian Penal Code.

3. Learned Advocate for the petitioner has strenuously argued that the petitioner at best can be termed as a customer and accordingly, he cannot be held liable under any of the provisions of the said Act.

4. Learned Advocate representing the State submits that the petitioner was caught red-handed from the brothel and after completion of investigation, the investigating agency has rightly submitted charge-sheet against the petitioner under Sections 3/4/5/7/18 of the said Act, on the basis of materials collected during investigation. The offence under Sections 3 and 4 of the I.T.(P) Act is established when the prosecutrix was enticed away and/or forced to carry on the profession of prostitution.

5. The charge sheet averment discloses that on 04.01.2019, acting upon credible source information a raid was conducted at 131, chittaranjan Avenue, Kolkata-73 by team of AHTU/DD. During raid some incriminating articles were seized from the said brothel after preparing proper seizure list and arrested total 10 (ten) accused persons including 8 (eight) female accused persons. During investigation it could be learnt that accd no.1 Rupa Das Jaiswal being the owner cum manger of the said brothel, and she is running said brothel for one year and six months and accused no.2 Amit Jaiswal being the pimp procure customer and sex workers for the said brothel and accused no. 4 to 10 are sex workers and accd no. 3 that is the present petitioner Mr. Babu being a

customer was found in compromising situation inside one room of said brothel with accused no. 4, who is a sex worker. It is specifically mentioned in the charge sheet that accused no. 1,2 and 4 to 10 were living on the earning of prostitution and accused no. 3 that is present petitioner being “customer” was receiving sexual enjoyment in lieu of money.

6. As could be seen from the materials available in the case diary(CD), the petitioner herein is a “customer” and except that nothing has been alleged against him. In this context, it is worthy to be mentioned here that none of the alleged offences against the petitioner herein is attributing in so far as “customer” is concerned.

7. It is evident from the reading of the concerned provisions, that section 3 of the I.T. (P) Act is a section which provides punishment for keeping a brothel or allowing premises to be used as brothel. Section 4 provides for punishment of living on the earnings of the prostitution. Section 5 provides procuring inducing or taking person for the sake of prostitution. Section 7 applies to prostitution in or in the vicinity of public place. Section 18 deals with closure of brothel and eviction of offenders from the premises. Section 120B of I.P.C. in about criminal conspiracy. Accordingly what is punishable under the Act is sexual exploitation or abuse of a person for commercial purpose and to earn the bread thereby keeping or allowing a premises as brothel and also when a person is carrying on prostitution in a public place or when a person is found soliciting or seducing another person as defined under the Act.

8. I find no material in the case diary which can suggest that the present petitioner is living on earning of the prostitution. There is no material in the

case diary that the accused/petitioner was at the material time living with the sex worker or that he was habitual at the material time in her company. There is nothing to show that the petitioner exercised control, direction or influence over her movement in the way, which can be shown to be aiding or abetting her sex work. Mere visiting the house of sex worker as customer cannot be presumed to be living on earnings of sex workers. To invoke the presumption it must be shown that he was found in the company of the sex worker on some other occasion.

9. In the present case, it is the specific case of the petitioner that he used to stay abroad and it further appears from the statement of the petitioner as recorded under Section 161 of the Cr.P.C. that on the date of occurrence he was returning from Dubai via Kolkata. He also stated in the 161 statement that on payment to one Rupa, he went to cubicle with sex worker and at that time raid was conducted by the police authorities.

10. This statement of the petitioner recorded under Section 161 Cr.P.C. also finds support in the statement of concerned sex worker i.e. accused No. 4 with whom present petitioner was allegedly found in compromising situation and also corroborates with the statement of other witnesses recorded by the police under Section 161 Cr. P.C. Statement of accd no. 4 shows that she was voluntarily having sex with present petitioner in lieu of money.

11. On perusal of the charge-sheet it also appears that the accused nos.1, 2 and 4 to 10 were living on the earning of prostitution. Accused no.3, that is the present petitioner was the “customer” who was receiving sexual enjoyment in lieu of money where accused no.1 was running the brothel.

12. So far materials available in the C.D. in respect of present petitioner (accused serial no. 3), section 3,4,5,17 of I.T. (P) Act and section 120B of I.P.C. does not attract. So far as section 7 of the I.T. (P) Act is concerned, it relates to carrying on prostitution by any person and the person with whom such prostitution is carrying on in a premises within a notified area. From the materials in C.D. including sketch map of the place of occurrence it does not disclose that the place, where Raid was conducted is a notified area or in an area as described in section 7(b) where present petitioner as “customer” can be said to carrying on prostitution with accused serial no. 4.

13. In view of the aforesaid materials as collected by the Investigating authority during investigation it is clear that the petitioner on the date of occurrence came from Dubai and according to the prosecution story he has paid money to the accused no.1 Rupa Das Jaiswal being the alleged owner cum manager of the alleged brothel and according to the prosecution case, he was merely a casual customer who had gone there for sexual enjoyment on payment basis.

14. Prostitution per se is not prohibited under I.T. (P)Act but it is also equally true that a “customer” may virtually encourages prostitution and may exploit the sex worker for money but in the absence of any specific allegation and materials, I have serious doubt as to how present petitioner (accused no.3) who is according to prosecution case merely a “customer” can be convicted with the help of materials in C.D. and under the said provisions of law. From the statement of witness, specially statement of accused no. 4 (sexworker) as recorded under section 161 Cr. P.C., there is hardly any scope to say that

present petitioner as “customer” had exploited the accused no. 4 or said customer/petitioner encourages anyone for prostitution.

15. Having regard to the facts and circumstances of the present case and considering the materials that the petitioner was found in the alleged brothel as customer and that on the date of occurrence he only went there after coming from Dubai to have sex with a sex worker in lieu of money and in the absence of any evidence that he is living on the earning of any of the accused/sex worker or is a habitual visitor of the said place and thereby has exercised control, direction or influence over the movement of any of the sex worker against which can be said to be aiding or abetting their sex work or that he was habitually living with any of the accused sex worker, I find that the sections in which the cognizance has been taken by the Magistrate against the present petitioner is bad in law and the said cognizance is taken without considering the materials in the case diary.

16. In view of the aforesaid discussion, the aforesaid G.R. Case No.18 of 2019 corresponding to Charge-Sheet No. 83 of 2019 dated 25.3.2019 in respect of the present petitioner is quashed and the cognizance taken by the Magistrate against the present petitioner in respect of the offence under Section 3/4/5/7/18 of and the order dated 21.3.2019 is hereby set aside.

17. Accordingly, C.R.R. 2363 of 2019 is allowed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(AJAY KUMAR MUKHERJEE, J.)