

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.6420 of 2022

ORDER:

Seeking the Court to quash proceedings that are pending against the petitioner who is arrayed as accused No.3 in Crime No.626 of 2022 of Madhapur (Guttala) Police Station, Cyberabad, the present Criminal Petition is filed.

2. Heard the submission of learned counsel for the petitioner as well as the learned Assistant Public Prosecutor representing the respondent-State.

3. Learned counsel for the petitioner states that a case was registered against the petitioner that he has committed offences punishable under Section 370(A)(2) IPC and Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "the PITA Act" for brevity) and indeed, as per the contents of FIR itself, the petitioner was found at the scene of offence in the capacity of customer. Learned counsel states that when the version of the prosecuting agency is that the petitioner was found at the scene of offence in the

capacity of customer, the provisions of the PITA Act does not attract and therefore, continuation of proceedings for the said offences is unsustainable.

4. On the other hand, learned Assistant Public Prosecutor states that on investigation, charge sheet would be accordingly laid.

5. This Court while dealing with the same subject matter, in the order, dated 11.7.2022, that is rendered in Criminal Petition No.5999 of 2022 has extensively dealt with the issue whether 'customer' would fall within the ambit of Sections 3 to 5 of the PITA Act and held that the provisions of the PITA Act does not cover the alleged customer. Same view was taken by this Court again in the decision that is rendered in Criminal Petition Nos.6806 and 6807 of 2022, dated 08.8.2022. This Court at paras 6 and 7 of the said common order held as follows:-

"6. Whether a customer would fall within the ambit of the provisions of Prevention of Immoral Traffic Act or not was extensively dealt with by this Court in the decision that is rendered in Criminal Petition No.5999 of 2022 dated

11.07.2022 (by Hon'ble Dr.Justice Chillakur Sumalatha). In the said decision, the observations of the Court, more particularly, at paras 10 to 13, are as under:-

“10. Section 3 of the PITA Act, 1956 prescribes punishment for keeping a brothel or allowing the premises to be used as brothel. Section 4 of the Act, 1956, prescribes punishment for living on the earnings of prostitution. Likewise, Section 5 of the Act, 1956, prescribes punishment for procuring, inducing or taking person for the sake of prostitution. Therefore, as rightly submitted by learned counsel for the petitioner, those provisions does not attract to the customer who approaches a brothel house or a woman in prostitution. Thus, this Court is of the view that continuation of proceedings against the petitioner-Accused No.4, even as per the version of prosecution who is the customer, under the provisions of Sections 3 to 5 of the Act, 1956 is un-desirable. However, Section 370-A IPC prohibits exploitation of traffic in person. The said provision reads as under:

“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.”

11. Thus, by the above provisions, it is clear that whoever knowingly or having reason to believe that a minor or a person has been trafficked, engages such minor or person for sexual exploitation, shall be punished.

12. Similar view has been expressed by this Court in the case of *Goneka Sajan Kumar Vs State of A.P*¹ and in the case of *Z. Lourdiah Naidu and another Vs State of A.P*².

¹ (2014) 2 ALD (CrI) 264

² (2013) 2 LD (CrI) 393

13. In the case on hand, the acts committed by the petitioner-Accused No.4 as per the contents of charge sheet squarely fall within the ambit of Section 370-A (ii) IPC.”

7. Thus, by the above decision, it is clearly indicated that Sections 3 to 5 of the Prevention of Immoral Traffic Act does not attract the customers. However, Section 370-A IPC attracts. Indicating the same view, the Criminal Petitions are disposed of. The Investigating Officer shall take note of the fact that Sections 3 to 5 of Prevention of Immoral Traffic Act does not cover the acts of the customers who are found involved in the acts pertaining to which the Prevention of Immoral Traffic Act is legislated. However, the customers would fall within the ambit of Section 370-A IPC. Therefore, in case, convincing material is found attracting the said provision, the Investigating Agency can proceed with the filing of final report on completion of investigation in respect of the said provision or in respect of any other provisions, except the provisions covered under Prevention of Immoral Traffic Act.”

6. As rightly submitted by the learned Assistant Public Prosecutor, on investigation, charge sheet would be accordingly laid by quoting the provisions of law which attracts to the case facts. However, the apprehension of the learned counsel for the petitioner is that in case, in a mechanical manner, Police concerned incorporates Sections 3 to 5 of the PITA Act, the trial of the case would be conducted by the Sessions Court and the petitioner would be put to hardship.

7. Having considered the submission thus made, this Court considers it desirable to dispose of this Criminal Petition indicating the legal position to be followed.

8. Resultantly, this Criminal Petition is disposed of with the following direction:-

The Station House Officer, Madhapur (Guttala)
Police Station, Cyberabad/Investigating Office
is directed to note that basing on the decisions
referred supra, a clear finding is given by this
Court that the provisions of the PITA Act does
not attract to the alleged customers. Therefore,

on investigation, if it is found that the petitioner is found at the scene of offence in the capacity of customer, the provisions of the PITA Act cannot be invoked. However, Section 370-A IPC attracts. In case, the petitioner/accused No.3 is found to have committed any other offence, charge sheet may be accordingly laid.

9. As a sequel, pending miscellaneous applications, if any, shall stand closed.

Dr. CHILLAKUR SUMALATHA, J

12.10.2022
dr