

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.223 OF 2015

ORDER:

This Criminal Revision Case is filed by the petitioner-accused No.1 aggrieved by the order dated 11.02.2015 in CrI.A. No.1056 of 2014 on the file of the Metropolitan Sessions Judge, Hyderabad confirming the order dated 27.10.2014 in CC No.215 of 2013 on the file of the Special Judicial Magistrate for Excise Cases, Hyderabad in convicting the petitioner-accused for the offence under Section 3 (2) (a), 4 and 5 of the Immoral Traffic (Prevention) Act, 1956.

2. The case of the prosecution in brief was that A1 was running a brothel house at Flat No.401, Prashanth Towers, Musheerabad, Hyderabad, by procuring the victim and providing her to customers, by collecting money from them and was living on the earnings of prostitution.

3. As per the charge sheet filed by the Inspector of Police, Musheerabad Police Station, on 23.10.2013 at 6.30 PM, while the police constables were on patrolling duty, they received information

about running of a brothel in Flat No.401, Prashanth Towers, Musheerabad. On that, one of the constables kept watch on the said flat. while the other constable proceeded to the police station and lodged a report. Basing on the said report, the Inspector of Police registered a case in Crime No.290 of 2013 for the offences under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short 'the Act'). The Inspector secured the panch witnesses and proceeded to the spot. He found A1 and A3 in the hall of the said flat and A2 in compromising position with the sex worker inside a room and took them into custody and seized Rs.2,000/-, two cell phones and condoms from the possession of A1, one Samsung cell phone and Rs.500/- cash from A2 and one Samsung cell phone and cash of Rs.1,000/- from A3 under the cover of panchanama. After investigation, he filed charge sheet against A1 to A3 for the offences under Sections 3, 4 and 5 of the Act. The Special Judicial Magistrate of First Class, Excise Cases, Hyderabad had taken cognizance of the case and on appearance of the accused, framed charges against A1 for the offence under Section 3 (2) (a), 4 and 5 of the Act and as A2 and A3 were arrayed as customers, framed charge for the offence under Section 7 of the Act against them.

4. During the course of trial, the prosecution examined PWs.1 to 6 and got marked Exs.P1 to P5 and MOs.1 to 8. No oral or documentary evidence was adduced by the accused.

5. On considering the oral and documentary evidence on record, the trial court acquitted A2 and A3 for the offence under Section 7 of the Act, but convicted A1 for the offence under Section 3 (2) (a), 4 and 5 of the Act and sentenced her to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/- in default of payment of fine, to undergo simple imprisonment for a period of three months for the offence under Section 3 (2) (a) of the Act; to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default of payment of fine, to undergo simple imprisonment for three months for the offence under Section 4 of the Act and further sentenced her to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/-, in default of payment of fine, to undergo simple imprisonment for four months for the offence under Section 5 of the Act and directed all the sentences to run concurrently.

6. Aggrieved by the said conviction and sentence imposed by the trial court, A1 preferred an appeal before the Metropolitan Sessions Judge, Hyderabad. The learned Metropolitan Sessions Judge vide Crl.A. No.1056 of 2014 dated 11.02.2015 dismissed the appeal confirming the judgment of the trial court.

7. Aggrieved further, the petitioner-A1 preferred this revision contending that the judgments of the courts below were not based on facts and evidence on record but was based on assumptions and presumptions. The lower appellate court failed to observe that the appellant-A1 had not indulged in any unlawful business of prostitution and she was victimised by the respondent police for statistical purpose. The lower appellate court failed to observe that the alleged victim, owner of the premises and also the neighbour of the premises were not examined and there were no substantial witnesses to support the version of the prosecution case. The prosecution failed to conduct medical examination of the victim and failed to examine any independent witness and prayed to set aside the judgment of the Metropolitan Sessions Judge in Crl.A. No.1056 of 2014 dated 11.02.2015.

6. Heard learned counsel for the revision petitioner – A1 and the learned Assistant Public Prosecutor.

7. The learned counsel for the petitioner-A1 argued on the same lines as raised in the grounds of revision.

8. The learned Assistant Public Prosecutor, on the other hand, submitted that both the trial court as well as the lower appellate court rightly appreciated the evidence on record and recorded the conviction against A1 which would require no interference by this Court and prayed to dismiss the revision.

9. Perused the record. The record would disclose that the trial court had discussed the evidence of the witnesses in detail and answered all the points raised with regard to the competency of the Investigating Officer, non-examination of the victim-sex worker, non examination of the owner/landlord and non-compliance of the mandatory provisions for conducting panchanama, the discrepancies in the evidence of the witnesses and all other aspects by referring to the case law on the said points and came to the conclusion about the

guilt of A1 for the offence punishable under Sections 3 (2) (a), 4 and 5 of the Act.

10. With regard to the contention of the revision petitioner about non-examination of the victim-sex worker, it was observed that the victim was a native of Punjab State and though the trial court dismissed the petition filed by one Jitender Srivastava, describing himself as brother of the victim, seeking her custody, as per the orders of the appellate court, the victim was given into custody to him. But, she fled away and escaped from further proceedings violating the undertaking given by her to the court. The trial court observed that the custodian Mr. Jitender Srivastava was also not available and inspite of best efforts by the concerned police to produce her as a witness, they failed to produce her and noted serious repercussions of non-availability of the victim-sex worker on the case pending and the need to keep her in Rescue/Protection Home atleast until the victim was examined as a witness.

11. But, however, considering the other available evidence on record, wherein PW.3-panch witness, PW.4-police constable and the woman police constable examined as PW.5 and PW.6-Inspector of

Police who stated about finding the sex worker and A2 in a compromising position in the bed room and that they also found the used condoms under the cot and the cash of Rs.2,000/- two cell phones and two condom packets seized from the possession of A1 and none of the accused A2 and A3 were related to A1 or the victim sex worker and it was a case where one of the accused was in a closed bed room with the sex worker at the time of raid, came to the conclusion that it was clear case of promiscuous sexual intercourse on hire and the money seized from the accused and use of cell phones by the accused for the commission of offence would prove the running of brothel and non-examination of the victim-sex worker would not affect or dilute the prosecution case.

12. With regard to the non-examination of the owner of the premises also, the trial court considering the suggestions given to the witnesses in the cross-examination by A1, observed that from the said suggestions it could be culled out that there was no dispute with regard to possession of A1 as occupier of Flat No.401, Prashanth Towers, Musheerabad, Hyderabad by the date of raid, non-examination of the owner of the flat who was an old aged woman of

78 years was not fatal to the prosecution case. This Court does not find any illegality or impropriety in the observations of the trial court in the said regard.

13. With regard to non-conducting the medical examination of the victim, the lower appellate court observed that failure to examine the victim medically would not affect the case, the medical examination might prove the sexual intercourse but, even if there was no sexual intercourse, the fact that she was found along with A2 in a compromising position, their intention is explicit to have sexual intercourse. Whether they already had it or not was the aspect which would be proved by the medical examination, but even if it was not accomplished by then, A1 could not get any benefit from the said fact. This Court is of the view that the purpose of medical examination of the victim is to provide any medical aid to her, if she was suffering with any sexually transmitted diseases but not to provide evidence of proof of sexual intercourse and hence, the objection by the learned counsel with regard to non-conducting the medical examination of the victim would not give any benefit to the accused.

14. With regard to failure of the prosecution to examine the independent witnesses, both the trial court and the lower appellate court observed that it would be difficult in such cases to secure woman panch witness as it would stigmatize them in the society and the Investigating Officer had rendered cogent explanation for his failure in securing female panch witnesses, no prejudice was caused to the accused by virtue of the said failure, as such, the same could not be taken into consideration in holding the accused guilty.

15. With regard to the discrepancies in the evidence of the witnesses, on the number of inmates found at the time of raid, the date of raid, the trial court rightly observed that the discrepancies were minor in nature and they would not go to the root of the prosecution case, when all the witnesses consistently deposed about the manner of raid, seizure and involvement of A1 to A3.

16. Thus, both the trial court and the lower appellate court appreciated the evidence of the witnesses in detail and came to a conclusion with regard to the guilt of the accused. The observations of the courts below are not based on assumptions and presumptions but based upon the facts and evidence on record. This Court does not

find any illegality or impropriety in the observations of the courts below to set aside the same. As such, this court does not find any merit in the contention of the learned counsel for the revision petitioner on the aspects raised in the grounds of revision.

17. In the result, the Criminal Revision Case is dismissed confirming the judgment of conviction and sentence dated 11.02.2015 passed against the petitioner-A1 in Crl.A.No.1056 of 2014 by the Metropolitan Sessions Judge, Hyderabad. The bail granted to the petitioner - A1 shall stand cancelled and she is directed to surrender before the trial court forthwith and in case she fails to do so, the trial court shall take appropriate steps to take the petitioner-A1 into custody.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. G. RADHA RANI, J

December 06, 2022
KTL