

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.8864 of 2022

ORDER:

Seeking the Court to quash the proceedings that are pending against the petitioner who is arrayed as accused No.3 in P.R.C.No.60 of 2022 on the file of the Court of XI Additional Chief Metropolitan Magistrate, Secunderbad, 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 Sections 370 and 370A IPC and Sections 3 to 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, the submission of the learned Assistant Public Prosecutor is that substantive material is on record to show the involvement of the petitioner in Crime and therefore, the proceedings should not be quashed.

5. The contents of the charge-sheet discloses that the petitioner was held to have committed the offences punishable under Sections 3 to 5 of the Immoral Traffic (Prevention) Act, 1956 and Sections 370 and 370A IPC. It is not in dispute that the petitioner was booked by police as he was as at the scene of offence in the capacity of customer.

6. While dealing with similar set of facts, this Court, through the order rendered in Criminal Petition No.5999 of 2022, dated 11.07.2022, held that the provisions of the Immoral Traffic (Prevention) Act, 1956, does not attract so far as the customers are concerned. This Court, however, entertained a view that Section 370A IPC

attracts. In subsequent decision of this Court in CrI.P.Nos.6806 of 2022 and 6807 of 2022, dated 08.08.2022 the same view was taken. In the said decision, this Court at Paras 6 to 8 of the 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 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.P¹ and in the case of Z. Lourdiah Naidu and another Vs State of A.P²

¹ (2014) 2 ALD (Cri) 264

² (2013) 2 ALD (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 decisions, it is clearly indicated that Sections 3 to 5 of 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 Immoral Traffic (Prevention) Act, 1956.

7. Indicating the same view, this Criminal petition is disposed of. The proceedings that are pending against the petitioner insofar as the offences punishable under Sections 3 to 5 of the Immoral Traffic (Prevention) Act, 1956 are hereby quashed. As the case facts attracts

Section 370A IPC, the proceedings shall continue against the petitioner for the said offences.

8. In the result, the Criminal Petition is allowed in part as indicated above.

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

Dr. CHILLAKUR SUMALATHA, J

10.10.2022
Dr