

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

123

CRM-M-7775-2022
Date of Decision: 11.07.2022

JAGDISH SINGH AND ANR.

....PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Shivam Sharma, Advocate and
Mr. Vikram Brar, Advocate
for the petitioners.

Mr. Harpreet Singh Multani, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. To the instant petition cast under Section 482 Cr.P.C., the petitioners crave for indulgence qua quashing of FIR No. 127 dated 22.08.2017, registered under Sections 3, 4 and 5 of the Immoral Traffic Prevention Act, 1956, hereinafter, in short call “the Act”, at Police Commissionerate, Ludhiana, Division No. 1, Ludhiana, and, also crave for a further indulgence that all the consequential proceedings, as arise therefrom, be also quashed.

2. The investigating officer, after the investigations being carried into the petition FIR, instituted an affirmative report under Section 173 Cr.P.C., before the learned Magistrate concerned. The accused, as, named in the report filed under Section 173 Cr.P.C., inclusive of the present petitioners, became charged for committing an offence punishable under Sections 3 and 4 of “the Act”.

3. The learned trial Judge through an order made on 04.12.2017 drew the hereinafter extracted charge against the petitioners.

“That on 22.08.2017 in the area of PS division No. 1 you accused knowingly lived, wholly or in part, on the earnings of prostitution and arranged girls for customers and run the brothel illegally thereby committed an offence punishable under Section 3/4/4 of the Immoral Traffic (Prevention) Act, 1956 and within the cognizance of this Court.”

4. The petition FIR was a sequel of a secret information being purveyed to the police about the user of premises known as hotel 'Sher-e-Punjab', rather as a brothel, by its owners namely Damanpreet Singh, and Gaganpreet Singh. In pursuance to the secret information, a raid of the above premises was conducted, and, the present bail petitioners were found in a compromising position, in a room of the raided hotel. Therefore, the investigating officer concerned, after conclusion of investigations into the petition FIR, proceeded to draw inculpations against them, hence under the above provisions as carried in “the Act”.

5. Though, it was open for the petitioners to, at the pre-charge stage, to avail the extantly constituted remedy before this Court, and or, even it was open to them to, at the stage of framing of charge, ask for theirs being discharged, qua the offences, in respect whereof, they became charged, but the above remedies did not become availed, at the above appropriate stages, rather by the petitioners.

6. Moreover, the instant petition has been uncontrovertedly filed only after the adduction of prosecution evidence, and, if so, yet if the petition offences were compoundable, thereupon, it is open to the concerned to, in accordance with law seek composition of the petition offences, but the above endeavour, can also not be validly made before the learned trial Judge concerned, as the petition offences are not compoundable, even with the

leave of the learned trial Court concerned.

7. In sequel, the evidence which has been adduced by the prosecution in support of the charge, rather cannot, but by the learned trial Judge, hence become appreciated, as any appreciation of the evidence, as made by this Court, would definitely ill serve the sole prerogative besides the exclusive jurisdiction of the learned trial Judge, to make lawful appreciation of the evidence as becomes adduced before him qua the charge drawn qua the purported relevant mis-demeanor.

8. Be that as it may, since it is stated, at the bar, by the learned State Counsel, on instructions given to him by the investigating officer concerned, that there is no evidence of the co-petitioner No.2 receiving monies, from co-petitioner No. 1, for onward transmission to the owner, and, staff of the hotel concerned, as rather appertaining qua the relevant mis-demeanor, besides, with the learned State Counsel also intimating this Court, that no evidence has been collected in respect of the co-petitioners being not in a live in relationship, therefore, prima facie the occupation of the hotel room by both of them may not be construable other than theirs', consensually in mating themselves, therein, as, may be both being in a live in relationship.

9. Consequently, the learned trial Judge concerned, for ensuring the protection of the dignity, and, esteem of co petitioner No. 2, and that too, after his also making a studied, and, circumspected perusal of, "the Act", wherein, prima facie rather no penal inculpation is drawable against any purported sex worker, rather the permissible penal inculpations, as, therethroughs drawable, are rather against the brothel keepers concerned, or, those who live on the earnings of prostitution, or, those who induce, or,

allure them into sex trade. However, it is prima facie marshable from the factual matrix embodied in the reply on affidavit, that, the above permissibly drawable inculcation rather may not ever become drawable, even against a sex worker, much less, than against consensually inmated persons in a hotel or other boarding place.

10. With the above observations, the petition is dismissed, but the above observations, may not work as any imperative diktat, upon the learned trial Judge, in his proceeding to make a decision in accordance with law qua the charges drawn qua the petitioners, into the petition FIR, but are only made to appeal to his judicial conscience, so that justice is done to all concerned.

(SURESHWAR THAKUR)
JUDGE

11.07.2022
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No