

03.10.2023

Item No.15

Ct.No.2

dc.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 142 of 2023

In the matter of : **Ramit Kumar**

... Petitioner.

Mr. Nabankur Paul,
Mr. Abhishek Sarkar

... For the Petitioner.

Mr. A. S. Chakraborty,
Mr. Nilay Chakraborty,
Mr. Ujjwal Luksom

... For the State.

The present revisional application has been preferred challenging the continuance of the proceedings arising out of Matigara Police Station Case No. 417 of 2018 dated 12.08.2018 wherein the investigating agency on conclusion of investigation submitted charge-sheet being No. 56/2019 dated 14.02.2019 under Sections 3/4/5/7/8 of the Immoral Traffic (Prevention) Act, 1956.

Learned advocate appearing for the petitioner submits that the petitioner was a customer and as such, he does not come within the ambit of Section 7 of the Immoral Traffic (Prevention) Act, 1956 (for short the said Act) as amended till date. Learned advocate further adds that the evidence, which has been relied upon so far as the present petitioner is concerned, does not suggest that there are materials which could show that the petitioner was a 'customer'. To that effect, learned advocate relies upon a judgement of a coordinate Bench of this Court as pronounced in **CRR 2363 of**

2019 (Suresh Babu @ Arakkal Arjunan Suresh Babu Vs. The State of West Bengal & Anr.). Emphasis is laid on paragraph 6 of the said judgement which is as follows :

“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.”

Learned advocate appearing for the State has handed over the case diary and drew the attention of the Court to the statement of the witnesses particularly that of Ajoy Kumar Tewari, Suraj Tamang, Yogesh Pradhan and Prafulla Barman. Learned advocate submits that along with the police team, about 16 witnesses raided the place where under the garb of a saloon/spa, prostitution was being carried out and the present petitioner along with another accused was found in a compromising position.

I have considered the submissions of the learned advocate appearing for the petitioner and taken into account the statement of the witnesses concerned who were independent witnesses and not a part of the police team. I have also taken into account the judgement relied upon by the learned advocate for the petitioner i.e. Suresh Babu @ Arakkal Arjunan Suresh Babu Vs. The State of West Bengal &

Anr. wherein the coordinate Bench on and from paragraph 12 onwards relied upon the materials in the case diary and stressed upon the issue as to whether raid was conducted in a notified area or in an area as described under Section 7(b) of the said Act where the petitioner was customer. The spirit in paragraph 14 of the said judgement reflects that a “customer” may virtually encourage prostitution and may exploit the sex worker for money, but in the absence of any specific allegation and materials, the Court proceeded to quash the proceedings. Naturally the issue which comes up is that whether ‘customer’ in general does not fall within the ambit as an accused under the provisions of Immoral Traffic (Prevention) Act, 1956.

Paragraph 17 in ***Gaurav Jain Vs. Union of India*** reported in **(1997) 8 SCC 114** is relevant which is set out as follows :

“**17.** Section 2(a) of the Immoral Traffic (Prevention) Act, 1956 (for short “the ITP Act”) defines “brothel” to mean any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purpose of sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutes. The essential ingredient, therefore, is a place being used for the purpose of sexual exploitation or abuse. The phrase “for the purpose of” indicates that the place being used for the purpose of the prostitution may be a brothel provided a person uses the place and asks for girls, where the person is shown girls to select from and

where one does engage or offer her body for promiscuous sexual intercourse for hire. In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove that a girl/lady should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of prostitution would be drawn from diverse circumstances established in a case. Sexuality has got to be established but that does not require the evidence of more than one customer and no evidence of actual intercourse should be adduced or proved. It is not necessary that there should be repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it. The prosecution has to prove only that in a premises a female indulges in the act of offering her body for promiscuous sexual intercourse for hire. On proof thereof, it becomes a brothel.”

The purpose for which the present Act of 1956 was brought into force was to criminalise certain acts within the ambit of prostitution. To that effect certain punitive Sections were amended and/or incorporated. Section 7(1) of the said Act reads as follows :

“7. Prostitution in or in the vicinity of public places.- (1)

Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises :-

.....”

Further Section 2(f) of the said Act defines “prostitution” which means sexual exploitation or abuse of persons for commercial purpose.

Earlier in 1956 Act the words which were incorporated are ‘women or girl’. Subsequently the same have been replaced by the word ‘person’ in Section 7(1) of the said Act. As a natural corollary, the person with whom such prostitution is carried out is significant, more so when the same is for commercial purpose. Therefore, the act of immoral traffic cannot be carried on or perpetrated without a ‘customer’ i.e. “person with whom the prostitution is carried on” as is found in Section 7(1) of the said Act. It is reiterated that the Act was brought into force to be a deterrent against and prevent immoral traffic. In the absence of the customer falling within the penal umbrella of the statute, the objects of the enactment can never be achieved. Thus, Section 7(1) of the said Act would bring within its ambit ‘customer’.

Coming back to the facts of the present case, I find that the place happens to be a City Centre-I which is a public place.

So far as the Section 7(1)(b) of the said Act is concerned, the term which is used as ‘such other public place of any kind’. Section 2(h) of the said Act defines “public place” to mean ‘any place intended for use by, or accessible to, the public and includes any public conveyance’. A “market place”

being a place accessible to all would come within the definition and satisfies all the requirements of Section 7 of the said Act.

Having regard to the materials at present available with the prosecution, I do not find that the petitioner has been able to make out any case for interference by this Court. As such, the revisional application being CRR 142 of 2023 is dismissed.

Pending connected application, if any, is consequently disposed of.

Case diary be returned to the learned advocate appearing for the State.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)