

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-M-54179-2021
Date of decision: 01.03.2023**

Gaurav Sehajpal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Shivam Sharma, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of FIR No.0127 dated 22.08.2017 registered for offence under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short, 'the Act') at Police Commissionerate, Ludhiana (Annexure P-1) along with all consequential proceedings arising therefrom.

As per the allegations levelled in the FIR annexed as Annexure P-1, a secret information was received by the police that the owner of Sher-E-Punjab Hotel namely Damanpreet Singh and Gaganpreet Singh along with their Manager Hari Om were using their hotel for immoral activities including prostitution, and were providing women to the customers upon payment. Pursuant to the secret information received, a raid was conducted at the above-mentioned hotel where the petitioner was found in one of the rooms with one girl in a compromising position. The petitioner, along with 8 other persons, was arrested. On completion of the investigation, the petitioner was

challaned and thereafter charges were framed against all the accused including the petitioner under Sections 3, 4 and 5 of the Act.

Learned counsel appearing for the petitioner *inter alia* contends that a bare perusal of the allegations levelled against the petitioner in the FIR in question as well as the challan which stands presented before the Trial Court does not even remotely make out a case inviting the mischief of offences under Sections 3, 4 and 5 of the Act. Learned counsel has argued that neither was the petitioner named in the FIR in question nor was there any secret information received by the police qua him. Learned counsel while drawing the attention of this Court to Section 3 of the Act has urged that it just prescribed punishment for running a brothel or allowing a premises to be used as a brothel. Section 4 of the Act prescribed punishment for living on the earnings of prostitution whereas Section 5 of the Act prescribed punishment for procuring or taking a person for the sake of prostitution. Learned counsel has argued that admittedly the petitioner was only a guest in Sher-E-Punjab Hotel. Even as per the FIR neither was he the owner of the premises nor even an employee of the hotel. Moreover, there were no allegations that the petitioner had procured any girl for the purpose of prostitution. Therefore, none of the above-mentioned penal provisions stood attracted against the petitioner. Learned counsel still further argued that in the worst case scenario, the petitioner could be alleged to be a customer of the brothel house. However, even if it was assumed that the petitioner was a customer of a brothel house, Section 3, 4 and 5 of the Act did not provide for any punishment to penalize a customer of a brothel house. To substantiate his submissions

learned counsel has placed reliance upon *Padala Venkata Sai Rama Reddy Vs. State of Andhra Pradesh represented by its Public Prosecutor and another : 2021 SCC OnLine AP 3774* and *Goenka Sajjan Kumar Vs. State of A.P. : (2014) 2 ALD (Cri) 264*. It has lastly been urged that it is a settled law that a penal statute must be construed strictly. Therefore, once the Act had omitted “customer” from its purview he could not be included by way of any interpretation to the contrary. Learned counsel has, therefore, prayed for quashing of the FIR and all consequential proceeding as no offence was made out under any of the Sections of the Act.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, submitted that Act was a legislation intended to deter and penalize persons who were involved in sexual exploitation for commercial purposes hence, it had a wider import. Learned State counsel has submitted that the penal provisions of Section 5 of the Act prima facie made out a case against the petitioner as it was evident that the petitioner was seen with a woman in a compromising position and hence it was evident that the woman was part of a prostitution racket. Learned State counsel prayed that in the light of the serious allegations against the petitioner, the FIR be not quashed and the present petition be dismissed.

I have heard learned counsel and perused the relevant material on record.

A perusal of the FIR which has been annexed as Annexure P-1 reveals that the petitioner was not named therein. The secret information was received qua both the owners of the hotel as well as

their Manager. It is a matter of record that both the owners namely Damanpreet Singh and Gaganpreet Singh were found innocent and thus not challaned, and placed in column No.2. Coming to the allegations levelled against the petitioner at best he can be termed to be a customer of a brothel which was allegedly being run in the Hotel premises. Prima facie the provisions of Section 3 and 4 of the Act are not made out against the petitioner. Since Learned State counsel has argued that the case of the petitioner would fall under Section 5A of the Act as the petitioner had procured a lady through the Manager of the hotel within the meaning of term 'prostitution' Section 5(1)(a) of the Act. It would thus be relevant to reproduce Section 5 of the Act:-

“5. Procuring, including or taking person for the sake of prostitution. -

(1) Any person who -

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) includes a person to go from any place, with the intent that he, may for the purpose of prostitution become the inmate of or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on or being brought up to carry on prostitution;

(d) causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years :

Provided that if the person of whom an offence committed under this sub-section-

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of

not less than seven years but may extend to life;
(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.
(3) An offence under this section shall be triable -
(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or
(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.”

A perusal of the above Section makes it abundantly clear that to bring a person within the purview of Section 5(1)(a) of the Act he must have obtained a woman for the purpose of prostitution. However, the respondent-State has failed to bring to the notice of this Court any material which may have been collected by the investigating agency from which it could be inferred that the woman who was allegedly found with the petitioner in one of the hotel rooms had been procured for the purpose of prostitution by the petitioner.

In the circumstances, this Court deems it appropriate to quash the FIR in question qua the petitioner.

Accordingly, the instant petition is allowed and the FIR in question along with all consequential proceedings is quashed qua the petitioner.

01.03.2023

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(MANJARI NEHRU KAUL)
JUDGE

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