

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 1739 OF 2024

DIPAK SONI
VS.
THE STATE OF WEST BENGAL

For the Petitioner : Mr. Moyukh Mukherjee,
Ms. Sagnika Banerjee,
Ms. Aishwarya Bazaz,
Mr. Souvik Palodhi.

For the State : Mr. Rudradipta Nandy,
Mrs. Shaila Afrin.

Hearing concluded on : 27.11.2024

Judgment on : 10.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of proceedings in connection with Tollygunge PS case no.146 of 2016 under Sections 120B and 370 of the Indian Penal Code read with Sections 3/4/5/7 of the Immoral Traffic (Prevention) Act, 1956 arising out of CGR No.1497/2016 and charge sheet no.163 of 2023 dated 01.03.2023 under Sections

120B and 370 of IPC read with Sections 3/4/5/7 of the Immoral Traffic (Prevention) Act, 1956 now pending before the Court of the learned Chief Judicial Magistrate, Alipore.

2. The case of the petitioner is that he is a law abiding citizen and had gone for body massage at the place of occurrence for various injuries to his body. At that time, some officers by making forceful entry arrested the petitioner stating that the place was a brothel and the petitioner was a customer of such sexual service.
3. The women/girls found at the place of occurrence are all major as seen from the case diary and none have stated in their statements recorded under Section 164 Cr.P.C. about being forced into prostitution.
4. The petitioner prima facie appears to be a customer as seen from the case diary.
5. **The Immoral Traffics (Prevention) Act, 1956 (here in after referred to the Act of 1956 defines :-**

2(a) “brothel” includes any house, room [conveyance], or place or any portion of any house, room [conveyance], or place, which is used for purposes [of sexual exploitation of abuse] for the gain of another person or for the mutual gain of two or more prostitutes.

*(f) **Prostitution** – Prior to 1986 amendment “prostitution” was defined to mean “the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression “prostitution” shall be construed accordingly under the new definition*

“prostitution” means the sexual exploitation or abuse of persons for commercial purposes. Thus, the present definition is not confined to the act of a female offering her body for promiscuous sexual intercourse with her, but includes sexual exploitation or abuse of a male for commercial purposes. According to Black’s Law Dictionary “prostitution is performing an act of sexual intercourse for hire, or offering or agreeing to perform an act of sexual intercourse or any unlawful sexual act for hire. The act of practice of a female of prostituting or offering her body to an indiscriminate intercourse with men for money or its equivalent”

Section 3 of the Act of 1956 lays down:-

3. Punishment for keeping a brothel or allowing premises to be used as a brothel. _

(1) Any person who keeps or manages, or acts or assist in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who –

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

6. There being no statement/allegations in the written complaint showing that the ingredients in respect of the said Sections are present in respect of this petitioner, Section 3 of the Act of 1956 in prima facie not applicable.

7. Section 4 of the Act of 1956 lays down:-

4. Punishment for living on the earning of prostitution - (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a terms of not less than seven years and not more than ten years].

8. None of the ingredient as required to constitute the said offence is prima facie alleged against the petitioner herein.

9. Section 5. Procuring, inducing 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) induces 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;

(c) takes, 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' or

(d) causes or induces a [person] to carry on prostitution; shree be punishable

Section – 6. Detaining a [person] in premises where prostitution is carried on –

(1) Any person who detains [any other person, whether with or without is consent,]

(a) In any brothel, or

(b) In or upon any premises with intent [that such person may have sexual inter course with a person who is not the spouse of such person] shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine;

*Finally **Section 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 –*

(a) Which are within the area or areas, notified under sub-section- (3), or,

(b) Which are within a distance of two hundred meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend to three months].

10. The words used in Sections 5, 6 and 7 the Act of 1956

requires contemplation while considering an application under Section 482 Cr.P.C. praying for quashing of the FIR and thereby the investigation which normally follows:-

The said words, including the ingredients therein to make out an offence under the said Sections have not been alleged in the written complaint in this case.

The allegations in the written complaint do not make out any ingredients required to constitute offences as laid down under Sections 3/4/5/6/7 of the said Act of 1956.

11. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka v. L. Muniswamy (1977) 2 SCC 699** held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or*

that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be

converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise

of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**

- 12.** The present case prima facie falls under category 1, 3 and 7 of ***Para 102 of Bhajan Lal (Supra).***
- 13.** Having considered the aforesaid facts and circumstances of the case, if the present proceeding is allowed to continue, it would be sheer abuse of process of court and as such this is a fit case where, invoking the power under Section 482 of the Code of Criminal Procedure, the present proceeding is required to be quashed.

14. CRR 1739 of 2024 is allowed.

15. The proceedings being Tollygunge PS case no.146 of 2016 under Sections 120B and 370 of the Indian Penal Code read with Sections 3/4/5/7 of the Immoral Traffic (Prevention) Act, 1956 arising out of CGR No.1497/2016 and chargesheet no.163 of 2023 dated 01.03.2023 under Sections 120B and 370 of IPC read with Sections 3/4/5/7 of the Immoral Traffic (Prevention) Act, 1956 now pending before the Court of the learned Chief Judicial Magistrate, Alipore, **is hereby quashed in respect of the petitioner Dipak Soni.**

16. The proceedings in CGR Case No. 1497 of 2016 will continue in respect of rest of the accused persons.

17. No order as to costs.

18. All connected applications stand disposed of.

19. Interim order, if any, stands vacated.

20. Let a copy be sent to the trial Court for necessary compliance.

21. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]