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Ct. No. 237

C.R.R. 2719 of 2022
Sri Raj Kumar Jeloka & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Tushar Kanti Mukherjee *...For the Petitioners*

Mr. Sandip Chakraborty *...For the State*

This an application under Section 482 of the Code of Criminal Procedure wherein the petitioners have prayed for quashing of proceedings in respect of present petitioners/accused persons, being C.G.R. Case No. 1077 of 2019 presently pending before the learned Chief Judicial Magistrate, Alipore.

It is contended on behalf of the petitioners that the de facto complainant on the basis of information from a reliable source that a brothel is running at a premises at Karya Police Station under the guise of a SPA after procuring sex workers and customers, has registered the aforementioned case. During investigation, Police arrested 12 (twelve) persons from the place of occurrence and also seized several documents. Police also recorded statements of all the accused persons under Section 161 of the Code Criminal Procedure. It is further submitted that the accused sex workers voluntarily made statements that they were working under the control of accused No. 1, the manager of the said brothel on receipt of money. The present petitioners were mere customers and no other allegations have been leveled against them. However, after completion of investigation, the Police submitted charge sheet against the present petitioners also who are admitted to be

customer even by the prosecution agency.

Petitioners further submit that the allegations under Section 3, 4, 5, 7 and 18 of the Immoral Traffic (Prevention) Act, 1956 read with Section 120B of the Indian Penal Code are not attributable against the present petitioners since they were mere customers. Accordingly, the petitioners have prayed for quashing the said proceeding in respect of the present petitioners, who are the customers.

It is submitted that in spite of several attempt made by the petitioners herein, the notice could not be served upon the de facto complainant/opposite party No. 2 as the postal endorsement shows that she left the place.

Learned Counsel appearing on behalf of the State produces the Case Diary and admitted that the present petitioners were mere customers and no specific allegations has been attributed against the present petitioner in connection with the alleged offence.

This Court while adjudicating a similar Case in *Suresh Babu @ Arakkal Arjunan Suresh Babu Vs. The State of West Bengal & Anr.* (C.R.R. 2363 of 2019) was pleased to held that in the absence of any specific allegation that the petitioners' encouraged the prostitution or has exploited sex worker for money, they cannot be convicted merely on the ground that they were arrested from the place while they were receiving service as customers. From the allegations made in the FIR as well as materials in the Case Diary, it clearly discloses that the petitioners were found in the place as customers and in the absence of any evidence that

the petitioners were living on the earning of any of the sex worker or is a habitual visitors of the place to encourage prostitution or exploit sex-workers, I find that continuance of the present proceeding against the present petitioners will be sheer abuse of process of law. This is also because Sections 3, 4, 5, 7 or 18 of the Immoral Traffic (Prevention) Act has got no manner of application in respect of the present petitioners. In view of above, the criminal proceeding being C.G.R. Case No. 1077 of 2019 presently pending before the learned Chief Judicial Magistrate, Alipore, South 24-Parganas is hereby quashed in respect of the present petitioners only.

The present application, being C.R.R. 2719 of 2022 is accordingly disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)