

116 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30724-2021

Date of Decision: 27.02.2024

Captain K. I. Sunil Simon @ Sunil Simon

.....Petitioner

Versus

State of Haryana and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jagdeep Singh Rana, Advocate,
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana with
ASI Satish.

HARKESH MANUJA, J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.510, dated 04.07.2018, registered under Section 14 of Foreigners Act, 1946, Sections 3, 4, 5, 7 and 8 of Immoral Traffic (Prevention) Act, 1956 (for short, "1956 Act), Section 120-B IPC and Section 3 of Passport Act, 1967, at Police Station DLF, Sector 29, Gurugram, District Gurugram, wherein the petitioner has been implicated being a customer found in objectionable position in the massage centre/spa run in the name of "Spa Time", Shop No.28, Sector 29, Gurugram.

2. Aggrieved against the implication of the petitioner in the aforementioned FIR, learned counsel for the petitioner submits that the petitioner never indulged himself in any such act violating the provisions of

1956 Act. He further submits that even if the allegations levelled in the FIR are taken at its face value, no offence is made out against the petitioner as he has not been found abusing or exploiting any of the girls employed/working in the Spa.

He also points out submits that the petitioner was merely being harassed on account of delayed trial against him as the charges in the present case were framed on 09.05.2019 and for the last 4 ½ years, none of the prosecution witnesses has been examined so far, thus, the proceedings against him are purely a misuse of the process of law.

3. On the other hand, prayer made herein has been vehemently opposed by learned State counsel while submitting that there are specific allegations against the petitioner, who was found in a objectionable position with one of the co-accused-girl working in the spa and thus, no illegality can be found in the proceedings being carried out against him.

4. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

5. A perusal of record shows that the FIR in question was registered on 04.07.2018, followed by filing of challan on 31.08.2018. Charges in the present case were framed on 09.05.2019, however, for the past 4½ years, none of the prosecution witnesses has been examined and the petitioner is facing the agony of prolonged trial. Moreover, in the investigation, the owner as well as the Manager of the Spa against whom specific allegation was levelled, have been exonerated by the Investigating Agency for the reasons best known to it. Furthermore, even if the allegations levelled in the

FIR are taken at its face value, the petitioner at best was found in the objectionable position with one of the girls working in the said spa. The relevant extract from the FIR is reproduced hereunder:-

“.....and in another room Wanvisainwan leas Inwan resident of Bangkok, Thailand and at present as tenant at DLF Phase-3, Gurugram and customer Sunil Simon son of Idikula, resident of Street Sadashiv Mehta, Chennai 29 were found in objectionable position.....”

6. Admittedly, there are no specific allegations against the petitioner of managing the Spa or allowing the premises in question to be used as such or even having exploited or abused any of the girls working in the Spa for any commercial purpose or for earning money or even procured, induced or taken her for prostitution, thus, he being at best the customer at the Spa, found at the time of conducting of raid, no offence under Sections 3, 4, 5, 7 and 8 of the 1956 Act read with section 120-B IPC can be said to have been made out against him; especially, in the wake of observations made by the Hon’ble Allahabad High Court in its decision dated 22.02.2024 passed in ***“State of U.P. through Principal Secy. Home Civil Sectt. Lko. and another”***. Relevant paras No.29 to 31 thereof are reproduced hereunder:-

*“29. In the judgements mentioned above, relied upon by the applicant in support of his second contention, the Gujarat High Court, Karnataka High Court, as well as Andhra Pradesh High Court also observed that merely the presence of a person as a customer at a brothel would not attract the ingredients of offence u/s 3/4/5/7/8/9 of the Act. Paragraph No.5 of the judgement in **Goenka Sajan Kumar (supra)** reads as under:-*

"5. None of these sections speaks about punishment to the customer of a brothel house. Admittedly, the petitioner does not fall under the provisions of Sections 3 to 7 of the Act, as the petitioner was not running a brothel house, nor did he allow his premises to be used as a brothel house. The petitioner is not alleged to be living on the earnings of prostitution. It is also not the case of the prosecution that the petitioner was procuring or inducing any person for the sake of prostitution, nor is it the case of the prosecution that any person was earning on the premises where prostitution is carried out."

30. Similarly, the Andhra Pradesh High Court, in the case of Nartu Rambabu (*supra*), relying upon the judgement in Goenka Sajan Kumar (*supra*), observed in paragraph No.8 that when a person visits a brothel as a customer, then he is not liable for prosecution for the offence u/s 3/4/5 of the Act.

31. In view of the above analysis, this Court is of the view that if a person visits a brothel, then, at the most, he may be said to be a procurer of a prostitute to satisfy his lust but not for the purpose of prostitution because acquiring a person for prostitution means sexual exploitation or abuse for commercial purposes and not for any other purpose which does not have any commercial purpose or earning money. Therefore, this Court answered both the questions raised in this case. First, a search conducted in violation of Section 15(2) of the Act can be said to be irregular but this ground cannot be the basis for quashing the impugned proceeding u/s 482 Cr.P.C. Still, this ground is available during trial, which can be decided on the basis of evidence, which may ultimately make the search doubtful. Second, a customer who visits the brothel will not be liable u/s 3/4/5/7/8/9 of the Act."

7. Resultantly, in view of the discussion made hereinabove, finding

merit in the present petition, the same is allowed. FIR No.510, dated 04.07.2018, registered under Section 14 of Foreigners Act, 1946, Section 3, 4, 5, 7 and 8 of 1956 Act, Section 120-B IPC and Section 3 of Passport Act, 1967, at Police Station DLF, Sector 29, Gurugram, District Gurugram and all the subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

27.02.2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: yes/no
Whether reportable? yes/no