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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 21.10.2024

+ **CRL.M.C. 2423/2024 & CRL.M.A. 9261/2024****POOJA RATHORE**

.....Petitioner

versus

STATE OF N.C.T. OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Adit S. Pujari, Mr. Ratnesh Sharma,
Ms. Amrita Verma, Ms. Dumini Soren and
Mr. Shaurya Mittal, Advs.

For the Respondent : Mr. Pradeep Gahalot, APP for the State
with Mr. Anurag Singh Tomar, Mr. Arjit
Mohan, Mr. Anish Kumar and Mr. Arjun
Singh, Advs. with SI Jitendra, PS GK-I.

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present petition is filed essentially seeking quashing of FIR No. 95/2008 dated 02.08.2008, registered at Police Station Greater Kailash-I, for offences under Sections 3/4/5/8 of the Immoral Traffic (Prevention) Act, 1956 ('ITP Act') and the proceedings emanating therefrom *qua* the petitioner. Chargesheet has been filed in the present



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case. The petitioner has been charged only for the offence under Section 8 of the ITP Act.

2. The brief facts of the case are that a tip was received in regard to flesh trade being carried out at D-16, Greater Kailash-I, New Delhi (hereafter '**subject property**'). Pursuant to the same, a raiding party was constituted. It is alleged that Inspector Rohtash Kumar entered the subject property as a decoy customer with Inspector Harpal Singh as a shadow witness. It is alleged that at the subject property, the co-accused Ashok Sethi presented three girls, including the petitioner, in front of the decoy customer as prostitutes. The decoy customer was offered to choose between the girls and told that it would cost ₹2,000/- to have sex with any of the girls. It is alleged that on this, the petitioner and one of the other girls made certain suggestive remarks. It is alleged that the decoy customer chose the petitioner and gave ₹2,000/- to the co-accused Ashok, who kept ₹1,000/- in his pocket and gave ₹1,000/- to the petitioner. The said notes were recovered from co-accused Ashok and the petitioner as well.

3. It is alleged that the petitioner stated in her disclosure statement that she had come to Delhi in search of a job and she was doing prostitution to sustain herself. She stated that she had met co-accused Ashok at the subject property and he used to take commission from the proceeds of prostitution.

4. The learned counsel for the petitioner submitted that the only allegation against the petitioner is that of being a sex worker. He submitted that there is no allegation against the petitioner that she was



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soliciting at a public place or that any solicitation took place at all which could be seen or heard from a public place.

5. He submitted that even as per the case of the prosecution, the police were tipped about flesh trade being carried out from the subject property and it is not as if the said fact was advertised to the public.

6. He submitted that even as per the description in the chargesheet, the subject property does not appear to be generally accessible to the public. He submitted that the decoy customer also had to go to the Drawing Room of the subject property which was in the interior portion of the house.

7. He submitted that the petitioner herself did not solicit any sexual favours. He submitted that solicitation in a private premises would not constitute the alleged offence. He submitted that it was the co-accused Ashok who presented the petitioner to the customer.

8. He submitted that Section 7 of the ITP Act provides the general words – “public place” following certain specific words like “public religious worship, educational institution, hostel, hospital, nursing home”. He submitted that the rule of *ejusdem generis* is intended to be applied when generic words are used. In the present case, the subject property doesn’t fall under any of the aforesaid categories.

9. He submitted that the purpose of Section 8 of the ITP Act is to criminalise public nuisance caused by such solicitation, which was admittedly not caused in the present case.

10. He submitted that the victim is herself a victim of the flesh trade rather than a perpetrator of acts as sought to be criminalised. He



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submitted that the aim of the ITP Act is not to penalise sex workers. He submitted that the Hon'ble Apex Court in the case of ***Budhadev Karmaskar (2) v. State of W.B. : (2011) 10 SCC 351*** had also directed that since voluntary sex work is not illegal, whenever there is a raid, the sex workers should not be harassed or victimised.

11. He submitted that the investigation was not carried out by the Special Police Officer as required under Section 13 of the ITP Act. He submitted that the same was also noted by the learned Sessions Court while discharging the accused Ashok.

12. The learned Additional Public Prosecutor for the State vehemently opposed the present petition. He submitted that it has been specifically alleged in the FIR that the petitioner made suggestive remarks with an intent to seduce and tempt the decoy customer for the purpose of prostitution.

13. He submitted that premises that are used for solicitation, even if privately owned, can be considered to be public places within the meaning of Section 8 of the ITP Act if they are accessible to the public. He submitted that the subject property was accessible to the public as seen from the entry of the decoy customer and the same satisfies the ingredients of Section 8 of the ITP Act.

14. He contended that the investigation in the present case was carried out by the Sub Inspector P.D. Singhal who was duly empowered to carry out the investigation in terms of Section 13 of the ITP Act.



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ANALYSIS

15. The petitioner has invoked the inherent jurisdiction of this Court to seek quashing of the FIR. The Hon'ble Apex Court in the case of ***Indian Oil Corporation v. NEPC India Limited and Others : (2006) 6 SCC 736*** has discussed the scope of jurisdiction under Section 482 of the CrPC to quash criminal proceedings. The relevant portion of the same is reproduced hereunder:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiware v. Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupam Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.



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(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) **The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.**

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

(emphasis supplied)

16. As held in the aforesaid case, it is to be seen whether the allegations in the FIR, even if taken at their highest, do not *prima facie* constitute the alleged offence against the accused person.

17. In the present case, it is alleged that the petitioner is a prostitute who was present inside in the subject property and presented to the decoy customer by co-accused Ashok. It is alleged that she also made certain sexually coloured remarks with the aim to entice and seduce the decoy customer.



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18. The petitioner has been charged only for the offence under Section 8 of the ITP Act.

19. Section 8 of the ITP Act stipulates the offence of seducing or soliciting for the purpose of prostitution. The same reads as under:

“8. Seducing or soliciting for purpose of prostitution.—Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not—

(a) by words, gestures, willful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:

Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.”

20. A perusal of the above provision makes it clear that the offending act of soliciting or seducing has to be either done in any public place or it has to be done in such a manner that it is within sight of a public place. In the latter case, it is of no consequence if the offending act itself is done from within any building or house. The legislative intent behind the provision is to protect public decency.



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21. Section 2 (h) of the ITP Act defines public place as any place that is intended for use by, or accessible to, the public. The same also includes public conveyance.

22. The petitioner has contested that the subject property cannot constitute a public place. In this regard, the petitioner has placed reliance on the judgment of **Amardeep Singh Chudha v. State of Maharashtra : 2016 SCC OnLine Bom 2286**. In the said case, the Hon'ble High Court of Bombay was interpreting the scope of "public place" to constitute the offence of Section 294 of the Indian Penal Code, 1860 ('IPC') which deals with the offence of causing annoyance by doing obscene acts and songs. It was held that a privately owned flat/ apartment in a building will not count as a public place. The relevant portion of the said judgment is reproduced hereunder:

"13. The main ingredient of section 294 of I.P.C. is commission of an obscene act at a public place. The Black's Law Dictionary, Eight Edition defines public place as under:—

"public place - Any location that the local, state or national government maintains for the use of the public, such as a highway, part, or public building."

*14. Section 294 of I.P.C. is meant for punishing persons indulging in obscene act in any public place causing annoyance to others. As such, the places where such obscene act is committed needs to be a public place and meant for use of public at large. Public must have free access to such place so as to call it a public place. **The place where public have no right rather a lawful right to enter into, cannot be said to be a public place for invoking the penal provisions of section 294 of I.P.C. for calling a place as a public place. It must be shown that public at large has a right to have free ingress to such place. Viewed from this angle, the flat/apartment in building owned by some private person meant for private use of such owner cannot be said to be a public place. It is not the case of respondents that any member of the public***



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has free access to the flat bearing Flat No. C-201 located in Evershine Cosmic, Kureshi Compound, Andheri (W), Mumbai. For resorting to the penal provision of section 294 of I.P.C., the prosecution is obliged to make out that the obscene act were performed at a public place or singing, recitals, or utterances of any obscene song, ballad or words were done in any public place.”
(emphasis supplied)

23. The petitioner has also relied upon the case of ***Lalit Sunil Patil v. State of Maharashtra : 2019 SCC OnLine Bom 6067*** where the Hon’ble Bombay High Court, while dealing with the offence under Section 294 of the IPC, had discussed whether the acts of the accused persons inside a private bungalow would constitute the aforesaid offence. The relevant portion of the judgment is reproduced hereunder:

“5. Here the report dated 26.03.2017 lodged by Police Naik Ganesh Varade shows that he entered a private bungalow after verifying the position from window. He states that outside bungalow, he could hear sound of music and dancing and when they peeped through window, they found the boys and girls dancing. Thereafter, they entered the bungalow through the door which was open.

6. Statements of two witnesses namely Sou. Priya and her husband are identical. They were travelling and wanted to book a room for night stay. When they were in search of Hotel, they could hear loud noise of singing and dancing. Hence, they peeped from window and then informed police.

7. The Police Naik as also these witnesses state that girls were inadequately dressed.

8. However, none of them point out dancing or singing was at a public place or then was visible from a public place. None of them also state that there was any obscene act or obscene song or obscene words and they heard such words at a public place.”

24. While the said judgments discuss the scope of “public place”, it cannot be ignored that they are not squarely applicable to the facts of



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the present case as they are in relation to the offence under Section 294 of the IPC instead.

25. It has also been argued that the investigation in the present case was not carried out by the proper officer.

26. Reliance has also been placed by the petitioner on the Office Memorandum dated 09.09.2009 titled '*Advisory on Preventing and Combating Human Trafficking in India*' of Ministry of Home Affairs whereby law enforcement agencies had been directed to take a victim centric approach and seek to book the pimps, brothel owners and clients who are the actual perpetrators of the crime.

27. There is no doubt that sex workers can be implicated under the ITP Act for the offence of solicitation for the purpose of prostitution and prostitution in the vicinity of public places. The Courts have time and again taken note of the plight of sex workers and the stigma attached to their work as well.

28. However, in the present case, it is relevant to note that while it is alleged that the petitioner made suggestive remarks, it is not the case of the prosecution that the petitioner had stepped on the road or caused annoyance to the neighbours or affected public decency in any manner to solicit or entice the decoy customer. Even if the case of the prosecution is taken at the highest, it is not alleged that the petitioner was visible from outside or the remarks made by her could be heard from outside either. It is also relevant to note that there are no public witnesses in the present case. It is stated in the FIR that 4-5 passers-by were asked to join the raiding party, however, they left without stating



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their names and addresses by giving valid excuses. The raid happened at around 6 PM in a populated area. Absence of public witnesses casts a shadow on the credibility of the testimonies of official witnesses.

29. It is also pointed out that the main co-accused Ashok, who was being implicated for offences under Sections 3/4/5 of the ITP Act for running a brothel and who was alleged to have kept a portion of the money taken from the decoy customer, has been discharged by the learned Sessions Court by judgment dated 29.10.2018. Despite the discharge of the accused Ashok way back in the year 2018, the prosecution against the petitioner is still continuing.

30. It appears that the accused Ashok had challenged the order dated 23.07.2014 whereby the learned Trial Court had found that *prima facie* there was sufficient material to frame charges for offences under Sections 3/4/5 of the ITP Act against accused Ashok and for offence under Section 8 of the ITP Act against the petitioner. The challenge to order dated 23.07.2014 was allowed by the Court of Sessions by judgment dated 29.10.2018 which has not been challenged by the prosecution.

31. The learned Sessions Court observed that the investigation was not carried out by a special officer as required under Section 13 of the ITP Act. It was also observed that a solitary instance was insufficient to attract the rigours of the ITP Act. The relevant portion of the judgment dated 29.10.2018 is reproduced hereunder:

“11. In the present case, investigation was not carried out by a special police officer as required under Section 13 of Immoral Traffic (Prevention) Act, 1956. As per Section 13 of the Act, only



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special police officer who was appointed by the State Government could investigate the matter, but in the present case investigation was carried out by SI P. D. Singhal which is not permissible in law. Further, a single instance is not sufficient to attract the provisions of Act.

12. A solitary instance of prostitution committed within any house or room or place would not, in my opinion, satisfy the ingredient of Section 2(a). The place inhabited by the accused is a place used once for the purpose of prostitution and therefore the house of the accused not be treated as a 'brothel'. A perusal of the definition of the word 'brothel' would clearly indicate that the place must be used for purposes of prostitution for the said of another person, or for the mutual gain of two or more prostitutes. The phrase 'for purposes of prostitution' postulates plurality of instances of prostitution. A single instance would not be suffice for satisfaction of or compliance with the ingredient of purposes."

32. It has been argued by the State that the concerned Sub Inspector was duly authorized to carry out the investigation and the observation of the learned Sessions Court in this regard is erroneous.

33. It is not denied that the judgment of the Sessions Court, which was passed almost six years back, has not been challenged. In such circumstances, the State cannot be allowed to contend to the contrary in the present case. The benefit of the same ought to extend to the petitioner herein.

34. The Hon'ble Apex Court in the case of ***Budhadev Karmaskar (5) v. State of W.B. : (2011) 10 SCC 354*** had noted as under:

"4. We have earlier pointed out in one of our orders that the problems of sex workers cannot be resolved in a very short time and will require long, patient effort. Our initial aim was to create awareness in the public that sex workers are not bad girls, but they are in this profession due to poverty. No girl would ordinarily enjoy this kind of work, but she is compelled to do it for sheer survival. Most sex workers come from poor families, they are



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subjected to ill-treatment by the owners of the brothels, they are often beaten, not given proper food or medical treatment, and made to do this degrading work. Probably much of the money paid by their customers is taken away by others.”

35. In such circumstances, when the discharge of the main accused Ashok who owns the subject property and was allegedly benefiting out of the prostitution has not been challenged, the benefit of the same needs to be accorded to the petitioner. Moreover, the observation of the learned Sessions Judge that the present case was a solitary incident also remains uncontroverted. Considering the same, even if the case of the prosecution is taken at the highest, it cannot be argued that the subject property was freely accessible to the public merely because the decoy customer was allegedly able to enter the subject property on one occasion.

36. This Court feels that no useful purpose would be served by keeping the matter alive and continuance of the proceedings against the petitioner would amount to abuse of the process of Court. I am of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

37. In view of the above, FIR No. 95/2008 and all proceedings arising therefrom are quashed *qua* the petitioner. Pending application also stands disposed of.

AMIT MAHAJAN, J

OCTOBER 21, 2024