



2023/KER/81946

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 21ST DAY OF DECEMBER 2023 / 30TH

AGRAHAYANA, 1945

CRL.REV.PET NO. 1208 OF 2023

AGAINST THE ORDER DATED 16.06.2023 IN CMP NO.1279/2023 IN
CC 217/2021 OF CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA
CRIME NO.202/2021 OF ALAPPUZHA NORTH POLICE STATION,
ALAPPUZHA

REVISION PETITIONER/PETITIONER/ACCUSED NO.3:



BY ADVS.
S.A.ANAND
ARUN KUMAR P.V.

RESPONDENT/CR. PETITIONER/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031.

SMT MAYA MN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 18.12.2023, THE COURT ON 21.12.2023
DELIVERED THE FOLLOWING:



P.G. AJITHKUMAR, J.

Crl.R.P.No.1208 of 2023

Dated this the 21st day of December, 2023

ORDER

Can a customer in a brothel be hauled in a prosecution under the Immoral Traffic (Prevention) Act, 1956 (ITP Act)?

2. That is the short question arising in this Revision Petition filed by the 3rd accused in C.C.No.217 of 2021 on the files of the Chief Judicial Magistrate, Alappuzha.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. Annexure A is a copy of the final report in crime No.202 of 2021 of Alappuzha North Police Station, based on which C.C.No.217 of 2021 was instituted. The specific overt act against the petitioner, who is the 3rd accused, is that he was found as a customer in the house from where all the accused were arrested. Accused Nos.4 and 6 were allegedly subjected to prostitution at the instance of accused Nos.1 and 2. Accused Nos.3 and 5 were alleged to be the customers.



5. A petition for discharge filed by the petitioner was dismissed by the learned Magistrate. The contentions were that the petitioner being a customer cannot be implicated for any of the offences under the ITP Act. Further contention raised was that the provisions of Section 15(5) and 15(5A) of the ITP Act are not complied with by the detecting officer. The court below did not accept the said contentions and directed to frame charges against the petitioner.

6. The offences alleged in Annexure A final report are punishable under Sections 3, 4, 5 and 7 of the ITP Act. Persons keeping a brothel or allowing premises to be used as a brothel are punishable under Section 3 of the ITP Act. Persons liable for prosecution under Section 4 are those who are living on the earnings of prostitution. Under Section 5, a person who procures, induces or takes persons for the purpose of prostitution are liable. Section 7 makes prostitution in or in the vicinity of public places punishable. The allegation against the petitioner is that he was a customer. Therefore, he cannot be charged with offences under Section 3, 4 or 7 of



the ITP Act. Even regarding the offence under Section 5 of the ITP Act, the learned counsel for the petitioner raised a contention that the act as a consumer would not come within the contours of this penal provision.

7. The learned Public Prosecutor would submit that the acts punishable under Section 5 of the ITP Act may include procuring of a person, whether with or without consent of that person, for the purpose of prostitution. It is submitted that the word 'procure' takes in the act of a person involved in prostitution as a customer also. The submission of the learned counsel for the petitioner in that regard is that the word 'procure' is used with a meaning that a person gets another person for the purpose of providing for prostitution and that does not take in a 'consumer'.

8. Section 5 of the ITP Act reads:

"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/her consent, for the purpose of prostitution; or
(b) induces a person to go from any place, with the intent that he/she 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/her carrying on, or being brought up to carry on prostitution; or

(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 in respect 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; and

(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 taken such persons made; or

(b) in the place to which he may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him is made.”



9. The word 'procure' is not defined in the ITP Act. Therefore, the word has to be understood in the context in which it is used and bearing in mind the object, the statute intends to achieve. The principal object of the Statute mentioned in the Statement of Objects and Reasons is to prevent commercialisation of the vices and trafficking among women and girls. The meaning of 'procure' given in Merriam Webster Dictionary is to get possession of; or to obtain something. If the said meaning of the word 'procure' is understood in the context of the aforesaid objective of the Statute, the person, who gets or obtains domain over a person for the purpose of prostitution, has to be said to procure a person for the purpose of prostitution. In that view of the matter, a consumer also comes within the purview of Section 5 of the ITP Act. Hence, the contention of the petitioner that even an offence under Section 5 of the ITP Act does not lie against the petitioner is untenable. The impugned order is therefore not liable to be set aside altogether.



10. The petitioner urges yet another contention that for non-compliance of the provisions of Section 15(5) and 15(5A) of the ITP Act, the prosecution has become illegal. What contemplated in the said provisions are not conditions precedent for a prosecution, but procedural safeguards for the protection of the interest of the victims of offence and also that of the offenders. Therefore, the said contention is untenable.

11. Accordingly, this Revision Petition is disposed of holding that the petitioner is liable to be charged for an offence under Section 5 of the ITP Act alone. Insofar as offences punishable under Sections 3, 4 and 7 of the ITP Act, the petitioner is discharged and the impugned order to that extent is confirmed.

Sd/-

P.G. AJITHKUMAR, JUDGE



APPENDIX OF CRL.REV.PET 1208/2023

PETITIONER ANNEXURES

- ANNEXURE A** A TRUE COPY OF FINAL REPORT IN
C.C.NO.217/2021 ON THE FILE OF CHIEF
JUDICIAL MAGISTRATE COURT, ALAPPUZHA
ARISING FROM CRIME NO. 202/2021 OF
ALAPPUZHA NORTH POLICE STATION
- ANNEXURE B** CERTIFIED COPY OF THE ORDER DATED
16.06.2023 IN C.M.P.NO.1279/2023 IN
C.C.NO.217/2021 CHIEF JUDICIAL
MAGISTRATE COURT, ALAPPUZHA
- ANNEXURE C** TRUE COPY OF THE ORDER DATED
16.11.2023 IN CRL.M.C. NO. 9681/2023
OF THIS COURT