

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE JUSTICE B.R. MADHUSUDHAN RAO

CRIMINAL PETITION Nos. 4093, 4614, 4977, 5063 & 9558 OF 2024,
2767, 3873, 3968, 4086, 4416, 4627, 4742, 5665, 6286, 7121, 7454, 7758,
8204, 8218, 8307, 8368, 8669, 8775, 8878, 9164, 9169, 9230, 9360, 9665,
9729, 9960, 10077, 10204, 10495, 10578, 10589, 10660, 10992, 11010, 11177,
11362, 11437, 11526, 11733, 11775, 11934, 12030, 12277, 12442, 12528,
12726, 12985, 13144, 13183, 13391, 13403, 13413, 13448, 13468, 13577,
13606, 13616, 13720, 13738, 14084, 14169, 14314, 14335, 14401, 14612,
14668, 14738, 14797, 14885, 14943, 15089, 15112, 15301, 15315, 15436,
15472, 15590, 15681, 15685, 15900, 15908, 15959, 15977, 16290, 16443,
16575, 16646, 16808, 16844, 16876, 16924, 17105, 17169, 17312, 17422,
17588, 17615, 17706, 17749, 17924, 17956, 17976, 18064 OF 2025 AND 59,
115, 129, 133, 353, 354, 363, 371, 594, 773, 817, 1152 1277 & 1780 OF 2026
ALONG WITH CRL. R.C.No.935 OF 2025.

DATE: 09.06.2026

Between (Crl.P.No.4093 of 2024):

Mr. Konda Hemanth Kumar

..... Petitioner/Accused No. 3

And

The State of Telangana, represented by its Public
Prosecutor & another

.....Respondent/Complainant

This Court passed the following:

COMMON ORDER ON REFERENCE: (Per Hon'ble Sri Justice K. Lakshman)

The present batch of criminal petitions has been placed before this Division Bench by the then Hon'ble Acting Chief Justice, pursuant to the order dated 09.06.2025 passed by the learned Single Judge in CRLP No. 2767 of 2025 and batch [hereinafter "reference order"].

2. Seeking clarification regarding the applicability of Section 370A (2) of the Indian Penal Code, 1860 [hereinafter "IPC"] to customers of a sex worker, the learned Single Judge had referred the following questions to be decided:

"i. Whether mere presence in such premises, without evidence of specific acts of exploitation or management, is sufficient to constitute an offence under the said provisions?

ii. Whether the customer in Immoral Traffic (Prevention) Act, 1956 can be prosecuted for the offence punishable under Section 370-A (2) of the IPC?"

3. Before dealing with the questions to be decided in the present reference, we deem it appropriate to discuss the background and the reference order passed by the learned Single Judge.

4. The Petitioners herein, allegedly, are the "customers" or clients of sex workers. Some of them claim to be merely present in the vicinity of the brothel house. Alleging that they were inducing and abetting prostitution, FIRs were registered against them under Sections 3, 4, and 5 of the Immoral Traffic

(Prevention) Act, 1956 [hereinafter “ITPA”], and Sections 370 and 370A (2) of the IPC (now Sections 143 and 144 of the Bharatiya Nyaya Sanhita).

5. Before the learned Single Judge, all the Petitioners had contended that the offences alleged against them pertain to human trafficking for the purpose of sexual exploitation. Since they were alleged to be mere customers, they contended that such offences would not apply to them. They contended that customers who pay money in exchange for sexual services cannot be held liable for trafficking or for sexual exploitation.

6. The learned Single Judge held that Sections 3, 4, and 5 of the ITPA would not apply to the “customers” of a sex worker. Likewise, it was held that the applicability of Section 370 of the IPC would depend upon the facts and circumstances of each case. However, with regard to the applicability of Section 370A(2) of the IPC to customers of a sex worker, the learned Single Judge noted that there was ambiguity in the correct legal position.

7. The learned Single Judge observed that different views had been expressed by multiple Benches of this Court regarding the applicability of Section 370A(2) of the IPC to customers and the evidentiary threshold required for its invocation. Likewise, the reference order noted that contrary views had been expressed on the question of whether the mere presence of a person in a

brothel is sufficient to attract Section 370A(2) of the IPC. The relevant paragraphs of the reference order are extracted below:

“13. A plain reading of the aforesaid provision shows that in cases where a sex worker engages in prostitution out of her free will without there being any inducement, force or coercion, there is ambiguity whether the customer would come within the purview of Section 370 IPC. This Court is of the view that it would still be a question of fact whether the woman is carrying on the said profession out of her free will or not. Generally, going by the traditions of the country, no woman would enter the said profession by choice unless forced to do so. Here, the view of this Court is that whether it is out of free will or not would remain a question of fact to be decided in the course of trial.”

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“25. With regard to the applicability of Sections 3, 4, and 5 of the PITA, there is no ambiguity that the ingredients of the said provisions do not attract the customers. The ambiguity arises only with respect to the applicability of Section 370A(2) of the IPC, i.e., Section 144 of the BNS

26. From the above judicial discourse, it is evident that there exists a divergence of opinion among the learned Single Judges of this Court as to:

- i. The applicability of Section 370-A(2) of IPC to customers, and the evidentiary threshold for invoking the same;
- ii. Whether mere presence in a brothel constitutes sufficient ground for such prosecution.”

8. It is evident from the reference order that the reference is confined to the applicability of Section 370A(2) of the IPC to the customers of a sex worker. However, we have noticed that the reference order observes that Section 370 of the IPC applies to a customer. The said observation appears to be contrary to certain decisions of this Court. Therefore, in addition to examining the applicability of Section 370A(2) of the IPC, we also intend to clarify the applicability of Section 370 of the IPC to customers of sex workers.

9. Usually, a Larger Bench, while exercising reference jurisdiction, is confined to the questions referred to it. However, in appropriate cases, a Larger Bench has the power to reframe, modify, or add to the questions referred for its consideration. In this regard, the decisions in **Pune Municipal Corporation v. Rajeev L. Sangtani**¹, **Dalpat Singh v. State of Rajasthan**², and **Vinod @ Boda v. State of Haryana**³ may be referred to. Therefore, for the sake of clarity and better exposition, we reframe the referred questions for consideration as follows:

- i. Whether a customer of a sex worker is liable for trafficking under Section 370 of the IPC?
- ii. Whether a customer of a sex worker can be prosecuted under Section 370A (2) of the IPC?

¹. 2019 SCC OnLine Bom 1492

². 2019 SCC OnLine Raj 1432

³. 2013 SCC OnLine P&H 8900

- iii. Whether the mere presence of a customer of a sex worker in the vicinity of a brothel house or on premises where the business of prostitution is carried on, without evidence of specific acts of exploitation, is sufficient to prosecute such person under Section 370A(2) of the IPC?

10. For the sake of convenience, the said provisions are extracted below:

“370. Trafficking of person.—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.—using threats, or

Secondly.—using force, or any other form of coercion, or

Thirdly.—by abduction, or

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

((3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten

years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. Exploitation of a trafficked person.—(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.”

11. Sections 370 and 370A of the IPC were introduced *vide* the Criminal Law (Amendment) Act, 2013, with the object to protect women and children

from trafficking. The said provisions were incorporated pursuant to the recommendations of the Justice J.S. Verma Committee.

12. It is pertinent to note that Sections 370 and 370A of the IPC punish the activity of trafficking with the intention of sexually exploiting the victim through the business of prostitution. However, Sections 370 and 370A of the IPC do not proscribe voluntary sex work. The same is evident from the clarification issued by the Justice J.S. Verma Committee in response to the representation made by the National Network of Sex Workers. The Committee clarified that the intention of Section 370 of the IPC was not to harass voluntary sex workers and their clients. The relevant portion of the said clarification is extracted below:

“The Committee, however, notes your representation on behalf of the National Network of Sex Workers to the effect that the Section 370 of IPC, after being amended by the Ordinance, could be misused by police and other governmental authorities to harass (i) sex workers who engage in prostitution of their own volition, and not pursuant to inducement, force or coercion, as the amended Section 370 of IPC provides, and (ii) the clients of such sex workers, by bringing the act of gratification for a sex worker’s services under the scope of the amended Section 370 of IPC. **The members of the Committee wish to clarify that the thrust of their intention behind recommending the amendment to Section 370 was to protect women and children from**

being trafficked. The Committee has not intended to bring within the ambit of the amended Section 370 sex workers who practice of their own volition. It is also clarified that the recast Section 370 ought not to be interpreted to permit lawenforcement agencies to harass sex workers who undertake activities of their own free will, and their clients. The Committee hopes that law enforcement agencies will enforce the amended Section 370, IPC, in letter and in spirit.”

13. It is also relevant to note that the Hon’ble Supreme Court in **Budhadev Karmaskar v. State of W.B.**⁴, observed that voluntary sex work is not illegal. The Court issued various directions to protect the rights of voluntary sex workers. Further, the police and other law enforcement agencies were directed not to harass voluntary sex workers. The relevant directions are extracted below:

“5. The directions that are issued today relate only to the rehabilitation measures in respect of sex workers and other connected issues. The panel has recommended in respect of the third term of reference in the following terms:

5.1. Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases, on the basis of “age” and “consent”. **When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action.**

⁴. (2022) 20 SCC 220

5.2. There have been concerns that police view sex workers differently from others. When a sex worker makes a complaint of criminal/sexual/any other type of offence, the police must take it seriously and act in accordance with law.

5.3. Any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault, including immediate medical assistance, in accordance with Section 357-C of the Criminal Procedure Code, 1973 read with “Guidelines and Protocols : Medico-legal care for survivor/victims of sexual violence”, Ministry of Health and Family Welfare (March 2014).

5.4. Whenever there is a raid on any brothel, since voluntary sex work is not illegal and only running the brothel is unlawful, the sex workers concerned should not be arrested or penalised or harassed or victimised.

5.5. The State Governments may be directed to do a survey of all ITPA Protective Homes so that cases of adult women, who are detained against their will can be reviewed and processed for release in a time-bound manner.

5.6. It has been noticed that the attitude of the police to sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised. The police and other law enforcement agencies should be sensitised to the rights of sex workers who also enjoy all basic human rights and other rights guaranteed in the Constitution to all citizens. Police should treat all sex workers with dignity and should not abuse them, both verbally and physically, subject them to violence or coerce them into any sexual activity.

5.7. The Press Council of India should be urged to issue appropriate guidelines for the media to take utmost care not to reveal the identities of sex workers, during arrest, raid and rescue operations, whether as victims or accused and not to publish or telecast any photos that would result in disclosure of such identities. Besides, the newly introduced Section 354-CIPC which makes voyeurism a criminal offence, should be strictly enforced against electronic media, in order to prohibit telecasting photos of sex workers with their clients in the garb of capturing the rescue operation.

5.8. Measures that sex workers employ for their health and safety (e.g. use of condoms, etc.) must neither be construed as offences nor seen as evidence of commission of an offence.

5.9. The Central Government and the State Governments must involve the sex workers and/or their representatives in all decision-making processes, including planning, designing and implementing any policy or programme for the sex workers or formulating any change/reform in the laws relating to sex work. This can be done, either by including them in the decision-making authorities/panel and/or by taking their views on any decision affecting them.

5.10. The Central Government and the State Governments, through National Legal Services Authority, State Legal Services Authority and District Legal Services Authority, should carry out workshops for educating the sex workers about their rights vis-à-vis the legality of sex work, rights and obligations of the police and what is permitted/prohibited under the law. Sex workers can also be informed as to how they can get access to the judicial system to enforce their

rights and prevent unnecessary harassment at the hands of traffickers or police.

5.11. As already recommended in the 6th interim Report dated 22-3-2012, no child of a sex worker should be separated from the mother merely on the ground that she is in the sex trade. Further, if a minor is found living in a brothel or with sex workers, it should not be presumed that he/she has been trafficked. In case the sex worker claims that he/she is her son/daughter, tests can be done to determine if the claim is correct and if so, the minor should not be forcibly separated.”

14. We proceed to answer the questions under reference bearing in mind that voluntary sex work is not prohibited under Sections 370 and 370A of the IPC.

Question No. 1: *Whether a customer of a sex worker is liable for trafficking under Section 370 of the IPC?*

15. In relation to the applicability of Section 370 of the IPC to a customer of a sex worker, we answer in the negative. We hold that a customer of a sex worker cannot be prosecuted for the offence of trafficking under Section 370 of the IPC.

16. As can be seen from the text of Section 370 of the IPC, it penalises the offence of “trafficking of person.” It punishes a “trafficker” who, for the purpose of exploitation, recruits, transports, harbours, transfers, or receives a

person. The provision does not contemplate the prosecution of a customer of a sex worker. A customer herein is a person who seeks sexual gratification by paying a sex worker for her services. Such a person cannot be termed a “trafficker.” A person who merely visits a brothel house or premises where the business of prostitution is carried on cannot be prosecuted for trafficking. A transaction for sexual services involving only the sex worker and the customer cannot be termed trafficking.

17. We clarify that, a customer is a person who avails the services of a sex worker for himself. However, where a person procures, engages, or arranges the services of a sex worker **for another person**, he cannot be regarded as a mere customer. In such circumstances, depending upon the facts of the case, such person may be liable to be prosecuted under Section 370 of the IPC.

18. The observation made in paragraph 13 of the reference order that the applicability of Section 370 of the IPC to a customer of a sex worker depends upon the facts and circumstances of each case is, in our view, not correct. Section 370 of IPC is inapplicable to a customer of a sex worker. The said finding is also contrary to other decisions of this Court in **Mohammad Riyaz v. The State of Telangana**⁵, **Kosunam Srisailam v. The State of Telangana**⁶, and **Chinthala Shiva Rao v. The State of Telangana**⁷.

⁵. Order dated 27.06.2018 in CRLP No. 5803 of 2018

19. Question No. 1 is answered holding that a customer of a sex worker cannot be prosecuted for trafficking under Section 370 of the IPC.

Question No. 2: *Whether a customer of a sex worker can be prosecuted under Section 370A (2) of the IPC?*

20. Before answering Question No. 2, it is apposite to refer to the decisions rendered by various learned Single Judges of this Court in order to examine the purported conflict in relation to the applicability of Section 370A(2) of the IPC to the customers of a sex worker.

21. In **S. Naveen Kumar v. The State of Telangana**⁶, it was held that Section 370A of the IPC applies to a customer of a sex worker. The learned Single Judge therein relied on the Justice J.S. Verma Committee Report. The relevant paragraphs are extracted below:

“b) However, that is not end of the matter. A perusal of the charge sheet would show that the police while charge sheeting A1 and A2 for the offences under Sections 3, 4, 5 and 6 of PIT Act and under Section 370A IPC, surprisingly charge sheeted petitioner/A3 only under Section 4 of PIT Act, but not under Section 370A IPC. Section 370A IPC reads thus:

Section 370A - Exploitation of a trafficked person

(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term

⁶. MANU/TL/1085/2022

⁷. Order dated 14.11.2023 in CRLP Nos. 10771, 10718, and 10583 of 2023

⁸. [2015 (2) ALD (Crl.) 156 (AP)]

which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

c) The phraseology engages such minor/such person for sexual exploitation in any manner employed in sub-sections (1) and (2) of Section 370A IPC in clear terms indicates that the flesh customer who hires the victim woman for sexual exploitation also falls within the fold of Section 370A as an offender.

d) It shall be noted that in the wake of gang rape of Nirbhaya in Delhi which arose an unprecedented public furore, Government considered it fit to drastically amend several provisions of IPC and in that direction appointed a Committee under the Chairmanship of late Justice J.S. Verma, the former Chief Justice of India. The Committee after interacting cross sections of stake holders submitted its detailed report suggesting amendments and introduction of various provisions in penal laws like IPC, Cr.P.C., Evidence Act etc. Consequent upon the said report sub-clause (2) of Section 370 IPC was amended and Section 370A IPC was introduced. Having regard to the avowed object with which report was submitted and amendments and new provisions were introduced in several acts, it cannot be presumed for the moment that Legislators considered customer as an innocent victim in the flesh trade. **Therefore, Section 370A takes in its fold the customer also.** So, despite the police charge sheeting petitioner/A3 only for the offence under Section 4 of PIT Act and the Committal Court accepting the same, it is evident from the charge sheet that the petitioner/A3 is prima facie liable for charge under Section 370A though not under Section 4 of PIT Act with which he was charge sheeted.”

22. Likewise, in **Sahil Patel v. The State of A.P.**⁹, **Mohammad Riyaz (Supra)**, **Kosunam Srisailam (Supra)**, **Gangasani Anil Reddy v. The State of Telangana**¹⁰, **Mohammad Nawaz v. The State of Telangana**¹¹, **Chinthala Siva Rao (Supra)**, and **Beeram Thirupathi Reddy v. N. Sudhakar Reddy**¹², the learned Single Judges have held that Section 370A(2) of the IPC applies to a customer of a sex worker.

23. On the other hand, reliance was placed on the decisions in **Bula Akhil v. The State of Telangana**¹³, **Jatin Kocher v. The State of Telangana**¹⁴, **Mohammad Naseem v. The State of Telangana**¹⁵ and **Dasari Gangadhar v. The State of Telangana**¹⁶ to contend that Section 370A(2) of the IPC does not apply to a customer of a sex worker. We are of the view that such reliance is misplaced. The said decisions do not lay down that Section 370A(2) of the IPC is inapplicable to customers of sex workers. Rather, it was on the facts of each case that the learned Single Judges held that there was no material or evidence available to prosecute the accused for the offence of Section 370A(2) of the IPC. The said decisions were rendered on the basis of insufficiency of evidence. They cannot be construed to mean that customers of a

⁹. MANU/AP/0022/2016

¹⁰. Order dated 21.09.2022 in CRLP No. 7219 of 2016

¹¹. MANU/TL/1949/2022

¹². MANU/TL/1370/2024

¹³. MANU/TL/0897/2021

¹⁴. 2022 LawSuit (TS) 1280

¹⁵. MANU/TL/1225/2023

¹⁶. MANU/TL/0052/2025

sex worker cannot be prosecuted under Section 370A(2) of the IPC. Therefore, in our view, there is no conflict between the decisions of various learned Single Judges of this Court in relation to the applicability of Section 370A(2) of the IPC to customers of a sex worker. However, since the issue has been referred for consideration and has repeatedly arisen before this Court, we deem it appropriate to answer Question No. 2 so as to clarify the applicability of Section 370A(2) of the IPC to a customer of a sex worker.

24. It is pertinent to note the distinction between Section 370 and Section 370A of the IPC. While Section 370 punishes the trafficker and the act of trafficking, Section 370A punishes the exploitation of a trafficked person.

25. Section 370A(2) of the IPC punishes a person who, having knowledge or reason to believe that a person has been trafficked, engages such person for the purpose of sexual exploitation. The object behind Section 370A (2) of the IPC is to punish the end user of trafficking, who drives the demand for trafficked persons.

26. For a better understanding of the object behind Section 370A (2) of the IPC, it is pertinent to refer to Article 19 of the Council of Europe Convention on Action Against Trafficking in Human Beings. The said provision obligates the signatories to the convention to criminalise use of services of a victim of trafficking. Article 19, similar to Section 370A of the

IPC, seeks to penalise the user of a trafficked person, i.e., the victim, if he has knowledge that the victim has been trafficked. Article 19 is extracted below:

“Article 19. Criminalisation of the use of services of a victim- Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.”

27. The Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings explains the object behind Article 19 as follows:

“230. Several considerations prompted the drafters to include this provision in the Convention. **The main one was the desire to discourage the demand for exploitable people that drives trafficking in human beings.**

231. **The provision targets the client whether of a victim of trafficking for sexual exploitation or of a victim of forced labour or services, slavery or practices similar to slavery, servitude or organ removal.**”

232. It could, for example, be made a criminal offence, under this provision, for the owner of a business to knowingly use trafficked workers made available by the trafficker. In such a case the business owner could not be treated as criminally liable under Article 18 – not having him/herself recruited the

victims of the trafficking (the culprit is the trafficker) and not having him/herself used any of the means referred to in the definition of trafficking – but would be guilty of a criminal offence under Article 19. **The client of a prostitute who knew full well that the prostitute had been trafficked could likewise be treated as having committed a criminal offence under Article 19, as could someone who knowingly used a trafficker’s services to obtain an organ.**

233. **An important point is that Article 19 targets use of the services which are the subject of the exploitation dealt with in Article 4(a). Article 19 is intended not to prevent victims of trafficking from carrying on an occupation or hinder their social rehabilitation but to punish those, who by buying the services exploited, play a part in exploiting the victim. Similarly the provision is not concerned with using the services of a prostitute as such. That comes under Article 19 only if the prostitute is exploited in connection with trafficking of human beings – that is, when the components of the Article 4 definition are present together.** As explained above, the Convention is concerned with exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in human beings. It defines neither “exploitation of the prostitution of others” nor “other forms of sexual exploitation”. It therefore does not affect the way in which Parties deal with prostitution in their domestic law.”

28. Akin to Article 19 of the Council of Europe Convention on Action against Trafficking in Human Beings, Section 370A of the IPC seeks to punish

a person who engages a trafficked sex worker for sexual exploitation. The plain, ordinary, and contextual meaning of the word “engages” in Section 370A(2) of the IPC is the hiring or availing of the services of a sex worker. Therefore, a customer who engages a sex worker for sexual services, having knowledge or reason to believe that such sex worker has been trafficked, can be prosecuted under Section 370A(2) of the IPC.

29. It is important to note that a client or customer can be prosecuted under Section 370A(2) of the IPC only if he or she had knowledge or reason to believe that the person engaged was a trafficked person. The existence of requisite *mens rea*, i.e., knowledge or reason to believe is central to punish a person under Section 370A(2) of the IPC. Explaining the test for determining existence of “knowledge” or “reason to believe”, the Hon’ble Supreme Court in **Joti Parshad v. State of Haryana**¹⁷, held as follows:

“4. The possession and sale of various counterfeit stamps by the appellant who was a stamp vendor is beyond dispute. Then the important question is whether he had knowledge or reason to believe that the stamps which he had in possession and was selling, were counterfeit of the stamps issued by the Government.

5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of “intention” or “knowledge” or “reason to believe”. We are now

¹⁷. [1993 Supp (2) SCC 497]

concerned with the expressions “knowledge” and “reason to believe”. **“Knowledge” is an awareness on the part of the person concerned indicating his state of mind. “Reason to believe” is another facet of the state of mind. “Reason to believe” is not the same thing as “suspicion” or “doubt” and mere seeing also cannot be equated to believing. “Reason to believe” is a higher level of state of mind. Likewise “knowledge” will be slightly on a higher plane than “reason to believe”. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words “reason to believe” thus:**

“26. ‘Reason to believe’.— A person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise.”

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. “knowledge” and “reason to believe” have to be deduced from various circumstances in the case. In the context of the circumstances obtaining in the instant case namely that the appellant admittedly was a

licenced stamp vendor and he was found in possession of counterfeit stamps, the explanation of the accused also becomes relevant and important in assessing and appreciating whether he had such knowledge or reason to believe that the stamps were counterfeited. Admittedly he used to purchase stamps from the treasury and all such transactions are duly recorded in the official registers. There is absolutely no material whatsoever to show that the counterfeit stamps were in fact purchased by him from the treasury. A bare allegation by way of an explanation by the accused-appellant that he purchased all the stamps including the counterfeit ones from the treasury appears on the face of it to be false, as he has neither produced registers maintained by him nor did he make even an effort to summon the treasury records. There is no material whatsoever even to probablise such a plea. In these circumstances the only inference that can be drawn is that he had “knowledge” and “reason to believe” that the stamps which he had in his possession and which he was selling or offering to sell, were counterfeit ones. These ingredients of the two provisions of law are fully established. Therefore the convictions are correct. The offence also is a serious one and the sentence awarded is not excessive. The appeal is therefore dismissed.”

30. The existence of actual knowledge or reason to believe is a question that depends on the facts and circumstances of each case. The courts must examine whether the surrounding circumstances were such that a reasonable person would have concluded that the person engaged was a trafficked person.

In such cases, the customer may be prosecuted under Section 370A(2) of the IPC.

31. For instance, the courts may examine whether the customer dealt directly with the sex worker or whether there was the involvement of a third party, such as a pimp, facilitator, broker, agent, or Manager/Supervisor etc., of the brothel house. Where a customer engages a sex worker through a third party who exercises control over the sex worker, such circumstance may constitute a relevant factor in determining whether the customer had reason to believe that the sex worker was a trafficked person. Likewise, the courts may take into account the statement of the sex worker to ascertain whether she was voluntarily engaged by the customer or was acting at the instance of a pimp or another person, and whether she was a victim of trafficking.

32. The essential ingredients of Section 370A(2) of the IPC are: (i) engagement of a person for the purpose of sexual exploitation; and (ii) knowledge or reason to believe that such person has been trafficked. For the purpose of Section 370A(2) of the IPC, the act of engagement of a trafficked sex worker with the requisite knowledge or reason to believe is sufficient to prosecute a customer. Actual sexual exploitation is immaterial. The provision seeks to penalise the act of engaging a trafficked person for the purpose of exploitation, and not the successful fulfilment of that purpose. Therefore, the

actual occurrence of sexual exploitation is not an essential ingredient of the offence under Section 370A(2) of the IPC.

33. We reiterate and stress that Section 370A(2) of the IPC will not apply in cases where sexual services are offered voluntarily by the sex worker directly to a customer. Voluntary sex workers and their clients cannot be harassed by invoking Section 370A(2) of the IPC. The question whether sex worker voluntarily engaged with the customer or was a victim of trafficking is a question of fact that must be determined on the basis of the facts and circumstances of each case. Therefore, the applicability of Section 370A(2) of the IPC to a customer would depend upon the status of the sex worker as a trafficked person and the customer's knowledge or reason to believe the same.

34. In answer to Question No. 2, we hold that a customer of a sex worker can be prosecuted under Section 370A(2) of the IPC, provided that such sex worker is a trafficked person and the customer had the knowledge or reason to believe the same.

***Question No. 3:** Whether the mere presence of a customer of a sex worker in the vicinity of a brothel house or premises where the business of prostitution is carried on, without evidence of specific acts of exploitation, is sufficient to prosecute such person under Section 370A(2) of the IPC?*

35. We have noticed conflicting opinions of learned Single Judges where the customer was merely present in the vicinity of the brothel or on premises where the business of prostitution is carried on.

36. In **Mohammad Nawaz (Supra)**, it was held that Section 370A(2) of the IPC gets attracted to customer who was found at the scene of the offence. Likewise, in **Beeram Thirupathi Reddy (Supra)** too, it was held that Section 370A(2) of the IPC shall apply to a customer who was found at the scene of the offence.

37. On the other hand, in **Jatin Kocher (Supra)**, it was held that mere presence of the customer is not enough to sustain a charge under Section 370A(2) of the IPC. The learned Single Judge therein held that, as there was no proof that the petitioner therein was found along with the sex worker, proceedings under Section 370A(2) cannot continue. The relevant paragraphs are extracted below:

“8. To attract an offence under Section 370-A(2), the said customer should have knowledge that a person has been trafficked and such person should have been sexually exploited in any manner. Only when both the ingredients are satisfied, person can be punished under Section 370-A (2) of IPC. **Nowhere, either in the remand report or in the panchanama the names of these petitioners are mentioned as the persons in the rooms along with the sex workers.**

9. In the said circumstances, when the facts of the cases cited by the learned Additional Public Prosecutor differ on facts, wherein the customers were found along with sex workers and **in the present case, they were found in the premises and there being no mention of these petitioners being present in the room along with sex workers, the provision under Section 370-A(2) of IPC is not attracted.**

10. In the said circumstances, the proceedings against these petitioners in FIR No.939 of 2022 of PS Banjara Hills on the file of III Additional Chief Metropolitan Magistrate at Nampally, are hereby quashed.”

38. Likewise, in **Mohammad Naseem (Supra)**, it was held that persons who were caught in the premises or in the surroundings of a brothel house cannot be termed as customers. The relevant paragraph is extracted below:

“28. Furthermore, the persons, who are caught in the premises or in the surroundings of the brothel house, were also implicated for the offence under Section 370 (A) 1.P.C. **The reports or the proceedings issued by the police themselves disclose that the persons were not found along with the sex workers in the room and they were either waiting in or around the surroundings of the brothel house. Therefore, those persons cannot be termed as customers.**”

39. As discussed above, the essential ingredients of Section 370A(2) of the IPC are (i) engagement of a person for the purpose of sexual exploitation; and (ii) knowledge or reason to believe that such person has been trafficked. It

is the act of engagement of a trafficked person with the knowledge or reason to believe that such person was trafficked is punishable. Actual sexual exploitation need not occur, as the offence is complete upon such engagement with the requisite *mens rea*.

40. The presence of an accused in the vicinity of a brothel house or on premises where the business of prostitution is carried on may be a relevant factor. However, mere presence, without proof of engagement of a trafficked person or knowledge or reason to believe that such person was trafficked, is insufficient to invoke Section 370A(2) of the IPC. Likewise, it would be incorrect to hold that Section 370A(2) of the IPC will get attracted only where a customer is found with the sex worker. As stated above, the act of engagement of a trafficked sex worker with requisite *mens rea* is sufficient. Evidence of specific acts of sexual exploitation need not be established to prosecute a person under Section 370A(2) of the IPC. For instance, a person may engage a trafficked person through a pimp or a broker. In such a case, the act of engaging and dealing with the pimp, coupled with the knowledge or reason to believe, is sufficient to attract Section 370A(2) of the IPC. Such person need not be found in the company of the sex worker.

41. Therefore, we answer Question No. 3 by holding that mere presence of a person in the vicinity of a brothel house or on premises where the business

of prostitution is carried on, is insufficient to prosecute a person under Section 370A(2) of the IPC. However, if the facts and circumstances indicate that such person was present in the premises and had engaged a trafficked sex worker with requisite *mens rea*, Section 370A(2) of the IPC shall attract. It is not necessary that specific acts of exploitation be established or that such person be found in the company of the sex worker.

42. In view of the aforesaid, we answer the reference as follows:

- i. A customer of a sex worker cannot be prosecuted for trafficking under Section 370 of the IPC;
- ii. A customer of a sex worker can be prosecuted under Section 370A(2) of the IPC, provided that such sex worker is a trafficked person and the customer had the knowledge or reason to believe the same; and
- iii. Whether mere presence of a person in the vicinity of a brothel house or on premises where the business of prostitution is carried on is sufficient to prosecute a person under Section 370A(2) of the IPC depends on the facts and circumstances of each case. Further, a person can be prosecuted under Section 370A(2) of the IPC, even in the absence of evidence establishing specific acts of sexual exploitation, provided the material on record indicates engagement of a trafficked

person for the purpose of sexual exploitation, with the requisite knowledge or reason to believe that such person was trafficked.

K. LAKSHMAN, J

B.R. MADHUSUDHAN RAO, J

9th June, 2026.
Mgr