



2026:AHC:169259

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 19429 of 2024

Nitin

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Mehul Khare, Pragya Pandey
Counsel for Opposite Party(s) : G.A.

Court No. - 75

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Heard Sri Mehul Khare and Ms. Pragya Pandey, learned counsel for the applicant, and learned A.G.A. for the State-respondents.

2. The instant application under Section 482 Cr.P.C. has been filed for quashing the proceedings of Case No. 581 of 2024 (State Vs. Najma Khatoon and others) arising out of Case Crime No. 515 of 2023 under Sections 3, 4, 5, 7 of Immoral Traffic (Prevention) Act, 1956 Police Station Shalimar Garden, District Ghaziabad pending before learned Civil Judge (Junior Division)/F.T.C. Judicial Magistrate, District Ghaziabad as well as to quash the charge sheet dated 14.01.2024 and also to quash the summoning order dated 25.04.2024 passed in the aforesaid case.

3. The brief facts of the case are that on 31.12.2023, the Assistant Commisnerate of Police, Shalimar Garden, Ghaziabad was informed by the polcie informant that near DLF Police Chowki at Bhojpura crossing in the house of one Harish Mawi, the women are engaged in sex trade, upon such informant, the police personnels reached the place and raided the house and all the women were called out from the room. Upon search of the 16 persons in which there are as many nine women and seven men were apprehended. The women told that

they are engaged in sex trade and out of their earning, they also pay to Harish Mawi. Upon which, a first information report was lodged on 31.12.2023 in Case Crime No.515 of 2023 at Police Station Shalimar Garden, District Trans Hidden (Commissionerate Ghaziabad) against the accused persons including the applicant. Thereafter, the matter was entrusted for investigation and the Investigating Officer after recording of the statements under Section 161 Cr.P.C. submitted charge sheet dated 14.01.2024 against the accused including the applicant under Sections 3,4,5,7 of The Immoral Traffic (Prevention) Act, 1956 Police Station Shalimar Garden, District Ghaziabad upon which cognizance was taken by the learned Magistrate vide order dated 25.04.2024, which has been registered as Case No. 581 of 2024 (State Vs. Najma Khatoon and others). It is this cognizance order and charge sheet dated 14.01.2024 as well as proceedings are under challenged before this Court.

4. Learned counsel for the applicant has contended that the mandatory provision of Section 15(2) of the Act, which specifically provides the presence of two independent local witness has not been complied and even if the entire allegations as levelled in the FIR are taken to be true, the provisions of Sections, 3, 4, 5, 7 of The Immoral traffic Act, is not attracted in the present case on the ground that the applicant is merely a customer, who had visited the premises, and being a customer visiting a brothel to satisfy his person does not constitute an offence against him. In support of his submissions, learned counsel has placed reliance upon paragraphs nos. 17, 18 of a reported decision of this Court passed in Application ***U/s 482 No. 9161 of 2023 (Dinesh Tiwari @ Dhirendra Kumar Tiwari Vs. State of U.P. and another)*** Neutral Citation No. 2024 AHC- LKO-15780, which reads as under.

"17. So far as the second question of whether a customer found in the brothel is liable to be

prosecuted under Sections 3/4/5/7/8/9 of the Act is concerned, Section 3 of the Act provides punishment for keeping or managing or acting or assisting in the keeping or management of a brothel. For reference, Section 3 is quoted below:-

"3. Punishment for keeping a brothel or allowing premises to be used as a brothel. —(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment

for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction."

18. From perusal of Section-3, it is clear that a customer cannot be said to be keeping or managing or acting or assisting in the keeping or management of a brothel because he simply comes and pays money to get a woman to satisfy his lust and nothing more."

5. Per contra, learned A.G.A. submitted that since the applicant was caught red-handed during a police raid at a house being run as a brothel, offences under Sections 3, 4, 5, and 7 of the Act are attracted against him as he procured prostitution by payment of money.

6. If a person visits a brothel as a customer, then at the most, he may be procuring a prostitute to satisfy his personal lust, but not for the "purpose of prostitution" as defined under the Act (which requires commercial exploitation). Therefore, a customer who pays money for gratification cannot be prosecuted under Section 3, 5, or 7 of the Act.

7. Perusal of the record shows that in the instant, the applicant was merely a customer and he had come to satisfy his personal lust after paying the money and not for the purpose of prosecution and therefore the provisions of Section Sections 3, 4, 5, 7 of Immoral Traffic (Prevention) Act, 1956 is not attracted against the applicant, thus continuance of the proceedings against the accused applicant, would amount to sheer misuse of the process of Court..

8. Accordingly, the application under Section 482 Cr.P.C. is allowed. The proceedings of Case No. 581 of 2024 (State Vs. Najma Khatoon and others) arising out of Case Crime No. 515 of 2023 under Sections 3, 4, 5, 7 of Immoral Traffic (Prevention) Act, 1956 Police Station Shalimar Garden, District Ghaziabad pending before learned Civil Judge (Junior Division)/F.T.C. Judicial Magistrate, District Ghaziabad as well as the charge sheet dated 14.01.2024 and also the summoning order dated 25.04.2024 passed in the aforesaid case are hereby quashed.

(Dr. Gautam Chowdhary,J.)

August 11, 2026

S.Ali