

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR**

Tuesday, the 11th day of August 2026 / 20th Sravana, 1948

ICR (CRL.MC) NO. 2 OF 2026

CRIME NO.536/2010 OF MUNAMBAM POLICE STATION ,ERNAKULAM DISTRICT

C.C. NO. 2447 OF 2015 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, NJARACKAL

PETITIONER/ACCUSED NO.2:

NOUSHAD S/O SULAIMAN, VALIYAKATH HOUSE, CHAVAKKAD, THRISSUR, PIN - 680506

RESPONDENT:

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

This Intra court reference (criminal misc. case) in CrI.M.C.8613/2022 having come up for orders on 11.08.2026, upon perusing this Court's reference order dated 21.01.2026 in CrI.M.C.8613/2022 and upon hearing the arguments of M/s. P.A.MUJEEB,RESHMA R.,ROSHNI PHILOMINA T.A.,ATHIRA UTHAMAN,NANDAGOPAN M.C, Advocates for the petitioner and the PUBLIC PROSECUTOR for the respondent, the court on the same day passed the following:

P.T.O

'CR'

**RAJA VIJAYARAGHAVAN V.,
&
K.V. JAYAKUMAR, JJ.**

**ICR (CrI.M.C.) No. 2 of 2026 in
CrI.M.C. No. 8613 of 2022**

Dated this the 11th day of August, 2026

ORDER

K. V. Jayakumar, J.

The question involved in this reference is whether a customer who visits a brothel for sexual activity can be implicated as an accused under Sections 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 ("the Act" for the sake of brevity).

2. Divergent views have been expressed by learned Single Judges of this Court on the aforesaid legal issue.

3. A learned Single Judge of this Court, by order dated 21.01.2026, while considering the application filed by the second accused seeking to quash the proceedings in C.C. No. 2447 of 2015 on the file of the Judicial First Class Magistrate Court-I, Njarackal, noticed the conflict in judicial opinion on the issue. Being of the view that the question required consideration by a larger Bench, the learned Single Judge directed the Registry to place the Criminal Miscellaneous Case before the Hon'ble Chief Justice for appropriate orders as to whether the matter should be referred to a Bench of two Judges. Pursuant thereto, the Hon'ble Chief Justice directed the Registry to place the matter before this Bench for an authoritative determination of the issue.

4. The allegation in C.C. No. 2447/2015 on the file of the Judicial First Class Magistrate Court- I, Njarakkal, was that the accused Nos. 1 to 5 were found indulging in sexual intercourse in a lodge managed by the 6th accused and CW7. The accused therein were charged for the offence punishable under Sections 3, 4 and 5 of the Act. The contention of the petitioner in Crl. M.C. 8613/2022, the 2nd accused in C.C.No. 2447/2015, was that the offences charged against him are not attracted as he was only a customer who does not fall within the purview of the Act.

5. In **Vijayakumar and others v. State of Kerala and others**¹, a Single Judge of this Court held that the act of engaging oneself in a sexual activity in a brothel is not an offence. The same view has been reiterated by another learned Single Judge in **Jith Joy v. State of Kerala**² and has also been expressed by the Andhra Pradesh High Court in **Muppina Ram Suresh @ Rajesh v. State of Andhra Pradesh** (Criminal Petition No. 4192 of 2022).

6. However, in **Mathew v. State of Kerala**³, **Abhijit v. State of Kerala**⁴ and **Sarath Chandran v. State of Kerala**⁵, learned Single Judges of this Court have held that a customer who visits a brothel for indulging in sexual activity is also covered under the provisions of the Act.

7. Sri. P.A. Mujeeb, the learned counsel for the petitioner in Crl. M.C. No. 8613 of 2022 and Smt. Dhanya S. Nair, the learned counsel for the petitioners in Crl. M.C. No. 1860/2026, submitted that the view expressed by this Court in

¹ [(2016 (1) KHC 698)]

² [2020:KER:29802]

³ [(2022 (7) KHC 515)]

⁴ [(2023 KHC Online 9425)]

⁵ [(2025 KHC OnLine 956)]

Vijayakumar and **Jith Joy** (supra) is the correct legal position to be followed in subsequent cases.

8. Per contra, Sri. K. Rajeev, the learned Senior Public Prosecutor, would submit that **Vijayakumar** (supra) is no longer good law in view of the subsequent decisions of this Court in **Mathew, Abhijit** and **Sarath Chandran** (supra).

9. Before proceeding to address the question of law involved in this matter, it would be apposite to refer to the relevant statutory provisions and the scheme of the Act.

10. The Immoral Traffic (Prevention) Act, 1956 (ITPA), was enacted with the principal object to prevent the commercialisation of vice and the trafficking of women and girls. The relevant provision of the Act are as under :

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 consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that he 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 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:

(emphasis supplied)

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 take such person is made; or

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

7. Prostitution in or in the vicinity of public places.— (1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in subsection (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), 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 may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may

extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

Explanation- for the purposes of this sub-section, "hotel" shall have the meaning as in Clause (6) of Section 2 of the Hotel Receipts Tax Act, 1980 (54 of 1980).

(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.

11. Bearing in mind the statutory scheme of the enactment, we shall now examine the divergent views expressed in the decisions of the learned Single Judges of this Court before proceeding to answer the question referred for our consideration.

12. In **Vijayakumar** (supra), a learned Single Judge of this Court held that the mere act of engaging in sexual activity, even in a brothel, is not, by itself, an offence punishable under the provisions of the Act. Proceeding on that premise, the learned Single Judge quashed the criminal proceedings initiated against the

petitioner, holding that a customer who merely visits a brothel and avails the services of a sex worker cannot be prosecuted under the provisions of the Act.

13. The same view was reiterated in Jith Joy (supra). Likewise, in **xxxxxx v. State of Kerala**⁶, another learned Single Judge held that a customer in a brothel cannot be proceeded against under Sections 3 or 5 of the Act merely because he avails the services of a sex worker, so long as he has not procured, induced or caused any person to carry on prostitution. However, in the subsequent decisions in **Mathew, Abhijit and Sarath Chandran** (supra), learned Single Judges of this Court took a contrary view and held that a customer who visits a brothel for the purpose of engaging in sexual activity can also be proceeded against for offences under the provisions of the Act. It is this apparent conflict in judicial opinion that has necessitated the present reference.

14. In **Mathew** (supra), while interpreting Section 7(1) of the Act, the learned Single Judge held that the expression "person with whom such prostitution is carried on" occurring in Section 7(1) is wide enough to include a customer. Consequently, it was held that a customer who visits a brothel situated within the notified area contemplated under Section 7 would also fall within the ambit of the said provision and would be liable to prosecution thereunder. The relevant paragraphs of the judgment read as follows:

"14. The meaning to be ascribed to the words the "person with whom such prostitution is carried on" is significant for this case. Those words will have to be read in conjunction with the definition of the word prostitution. The term prostitution is defined as sexual exploitation or abuse of persons for commercial purposes. Sexual exploitation cannot

⁶ 2026 KHC 1625

be done singularly. The person engaged in the act of exploitation is also a person who falls within the term 'persons with whom such prostitution is carried on'. In other words, the person who exploits or abuses the prostitute is the person with whom the prostitute carries on prostitution. Thus the act of immoral traffic cannot be perpetrated or carried on without a 'customer'. By using the words 'person with whom the prostitution is carried on' in S.7(1) of the Act, I am of the considered view that the legislature has intended the customer also to be brought within the purview of the penal provisions.

15. In this context, the purpose of the Statute cannot be ignored. The Act is intended to be a deterrent against and prevent immoral traffic. In the absence of the customer falling within the penal umbrella of the Statute, the objects of the enactment can never be achieved. Thus, in my considered opinion, the words 'person with whom such prostitution is carried on' as appearing in S.7(1) of the Act will include a 'customer'."

(emphasis supplied)

15. In **Abhijit** (supra), another learned Single Judge of this Court examined the scope of Section 5 of the Act and took the view that a person who obtains or secures dominion over another for the purpose of prostitution can be said to have "procured" such person within the meaning of the provision. On that reasoning, the learned Single Judge interpreted Section 5 to have a wider ambit than that adopted in the earlier decisions. Paragraph 9 of the judgment reads as follows:

"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 S.5 of the ITP Act. Hence, the contention of the petitioner that even an offence under S.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”.

(emphasis supplied)

16. In **Sarath Chandran** (supra), another learned Single Judge of this Court took the view that a person who avails the services of a sex worker in a brothel induces the sex worker to carry on prostitution by offering monetary consideration. According to the learned Single Judge, the payment made by the customer constitutes an inducement within the meaning of Section 5(1)(d) of the Act, as the payment is the consideration that persuades the sex worker to offer his or her body and act in accordance with the customer's demands. On that reasoning, it was held that a customer could also be prosecuted under Section 5(1)(d) of the Act. Paragraph 10 of the said judgment reads as follows:

“10. The diametrically opposite view taken by the other High Courts is that a customer in a brothel cannot be penalised under S.5 or 7 of the Act. I respectfully disagree with the reasoning in those decisions. In my view, a person utilising the service of a sex worker at a brothel cannot be termed a customer. To be a customer, a person should buy some goods or services. A sex worker cannot be denigrated as a product. In most cases, they are lured into the trade through human trafficking and compelled to offer his / her body to satisfy the carnal pleasure of others. Indeed, the pleasure seeker may be paying money, a large chunk of which goes to the keeper of the brothel. The payment therefore can only be perceived as an inducement to make the sex worker offer his / her body and act in accordance with the demands of the payer. Thus, a person availing the services of a sex worker in a brothel is actually inducing that sex worker to carry on prostitution by paying money and is therefore liable to be prosecuted for the offence under S.5(1)(d) of the Act. In that view of the matter, if the inducer is termed as a customer, that would be contrary to the object of the Act, which is intended to

prevent human trafficking and not punish the persons compelled to indulge in prostitution. Here, it is pertinent to note that only S.7 of the Act is intended to punish the sex worker, that too only when prostitution is carried on in a prohibited area”.

(emphasis supplied)

17. We have given our anxious consideration to the rival submissions advanced by the learned counsel in the light of the statutory provisions referred to above. The Immoral Traffic (Prevention) Act is a social welfare legislation enacted to combat commercial sexual exploitation, suppress trafficking in persons for the purpose of prostitution, and prevent the commercialisation of vice.

18. Section 5 provides the punishment to a person who procures, induces or takes another person with or without his consent for the purpose of prostitution. Sub-clause (3) of Section 7 empowers the State Government to prohibit prostitution in certain areas by notification in the official gazette. Sub-clause (1) of Section 7 says that carrying on prostitution in the notified areas or within 200 metres from the places of public religious worship, educational institutions, hospitals, etc., notified by the Government. Sub-clause (2) of Section 7 imposes penal liability to the keeper of any public place who knowingly permits prostitutes to conduct the trade or remain there in such public places.

19. The principal issue arising for consideration in this reference is whether a person who visits a brothel as a customer for the purpose of engaging in sexual activity can be prosecuted under Sections 5 and 7 of the Act. In **Vijayakumar** and **Jith Joy** (supra), a narrow interpretation was placed upon the

relevant provisions, leading to the conclusion that a customer does not incur criminal liability under the Act.

20. In **Vijayakumar** (supra), the learned Single Judge held that the mere act of a customer engaging in sexual activity in a brothel is not, by itself, an offence punishable under the provisions of the Act. On that reasoning, the criminal proceedings initiated against the customer were quashed.

21. In **Mathew** (supra), however, a learned Single Judge adopted a different approach while interpreting Section 7 of the Act. It was held that the expression "person with whom such prostitution is carried on" occurring in Section 7(1) is wide enough to include a customer. Consequently, it was held that a customer who visits a brothel situated within a notified area also falls within the ambit of Section 7 and is liable to prosecution under the said provision.

22. In **Abhijit** (supra), another learned Single Judge examined the scope of the expression "procure" occurring in Section 5 of the Act and held that the provision is not confined only to traffickers or intermediaries. According to the learned Single Judge, a customer who obtains or secures a sex worker for the purpose of prostitution also comes within the ambit of Section 5. The learned Judge interpreted the expression "procure" in its ordinary meaning, namely, to obtain or secure a person for a particular purpose.

23. In **Sarath Chandran** (supra), this Court went a step further and held that a customer who avails the services of a sex worker in a brothel induces

the sex worker to carry on prostitution by offering monetary consideration. The learned Single Judge observed that the payment made by the customer constitutes the very inducement that persuades the sex worker to engage in prostitution and, therefore, such a customer would be liable for prosecution under Section 5(1)(d) of the Act. It was further observed that a person who avails the services of a sex worker in a brothel cannot be viewed merely as a passive customer detached from the commercial activity.

24. It is in the above statutory and constitutional backdrop that the provisions of the Act require to be interpreted. A brothel is not merely a place where sexual activity takes place. It is a commercial establishment created and maintained for the systematic exploitation of persons for financial gain. The sex worker is frequently reduced to an object of commerce, with the brothel keeper deriving profit from such exploitation. Equally, the commercial activity cannot exist in the absence of those who patronise it. Sexual activity within a brothel necessarily involves two participants. While the brothel owner organises and profits from the enterprise, the customer sustains and perpetuates that enterprise by creating the demand for commercial sexual exploitation. In many cases, the sex worker is persuaded, induced, coerced or compelled by circumstances, by traffickers, or by those controlling the brothel, to continue in prostitution. The customer is therefore not entirely disconnected from the exploitative commercial activity that the statute seeks to eradicate.

25. The activities carried on in a brothel constitute commercial sexual exploitation. Such exploitation is sustained by two indispensable components, namely, the organiser who facilitates and profits from the activity, and the person who avails the services for consideration. The victim of this commercial arrangement is invariably the sex worker. If penal consequences are confined only to the brothel keeper or organiser while completely excluding the person whose demand fuels the commercial activity, the legislative object of suppressing commercial sexual exploitation would stand substantially diluted. An interpretation that weakens the efficacy of a beneficial social legislation ought to be avoided when the language of the statute reasonably admits of a construction that advances its purpose.

26. The establishment of a brothel is itself an unlawful commercial venture intended to solicit persons willing to purchase sexual services. The very existence of such an establishment is dependent upon those who respond to that solicitation. The customer, by voluntarily entering the brothel and availing the services of a sex worker for consideration, becomes an active participant in the commercial transaction. The commercial exploitation sought to be prohibited by the Act is therefore sustained not merely by the brothel keeper but also by those who knowingly patronise it. In such circumstances, we find no justification to immunise one of the essential participants in the prohibited activity from criminal liability, if the statutory provisions, properly construed, bring such conduct within their ambit.

27. In the light of the above discussion, and having regard to the object of the enactment, the statutory scheme and the principles laid down by the Apex Court, we are of the considered view that the interpretation adopted in **Mathew** (supra), **Abhijit** (supra) and **Sarath Chandran** (supra) lays down the correct legal position. Consequently, the contrary view expressed in **Vijayakumar** (supra), **Jith Joy** (supra) and the other decisions following the same line of reasoning does not, in our respectful opinion, state the law correctly and stands overruled.

The reference is thereby answered as above.



Sd/-
RAJA VIJAYARAGHAVAN V
JUDGE

Sd/-
K. V. JAYAKUMAR
JUDGE

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