

HON'BLE SRI JUSTICE NINALA JAYASURYA

CRIMINAL PETITION No.6182 OF 2022

Between:-

Korada Subrahmanyam

... Petitioner/Accused No.2

and

The State of Andhra Pradesh represented by
Represented by its Public Prosecutor.

... Respondent

Counsel for the petitioner : Mr.Kakumanu Joji Amrutha Raju

Counsel for the respondent : The Public Prosecutor

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1972 seeking to quash the proceedings against the petitioner in C.C.No.78 of 2020 on the file of the Court of Principal Junior Civil Judge, Mangalagiri.

2. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor representing the respondent.

3. The petitioner is Accused No.2 in Crime No.179 of 2017 on the file of Tadepalli Police Station. After completion of investigation, a charge sheet was filed against him along with other accused for the offences punishable under Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act, 1956 (ITP Act) alleging that when the Police raided a brothel house, the petitioner was present there as a customer and he visited the said premises to have sexual intercourse with a prostitute on payment of cash.

4. The learned counsel for the petitioner *inter alia* submits that prosecution for the offences under Sections 3, 4 and 5 of ITP Act is not maintainable against a person, who visits the brothel house only as a customer. He further submits that the legal position as to whether a customer who visits a brothel house is liable for prosecution or not is no more *res integra* and the matter is covered by recent decisions of this Court in **Padala Venkata Sai Rama Reddy vs. The State of Andhra Pradesh**, Criminal Petition No.6733 of 2021 dated 29.11.2021, and **Salapu Venkateswara Rao vs. The State of Andhra Pradesh**, Criminal Petition No.2156 of 2022, dated 13.3.2022. While drawing attention of this Court to the said decisions, learned counsel would urge that charge sheet filed against the petitioner in the present case is liable to be quashed.

5. The learned Assistant Public Prosecutor *inter alia* opposing the Criminal Petition, however, fairly submits that as per the charge sheet the petitioner is only a customer and the legal position in the decisions relied on by the learned counsel for the petitioner is not disputed.

6. The learned Judge in **Padala Venkata Sai Rama Reddy** while referring to the earlier decisions of this Court in **Z.Lourdiah Naidu v. State of A.P.**¹, **Goenka Sajan Kumar v. the State of A.P.**² as also the decision of Hon'ble High Court of Karnataka

¹ 2013 (2) ALD (Cri) 393 = 2014(1) ALT (Cri) 322 (A.P.)

² 2014(2) ALD (Cri) 264 = 2015(1) ALT (Cri) 85 (A.P.)

at Bengaluru in **Sri Roopendra Singh v. State of Karnataka**³ held that continuation of criminal proceedings against the petitioner therein, who was present in a brothel house at the time of raid by the Police as a customer, or fastening with any criminal liability in respect of any of the offences for which the charge sheet was filed, would amount to abuse of process of law. The relevant paras in the said decisions may be extracted for ready reference:

(i) Paragraph Nos.6 and 7 in **Z.Lourdiah Naidu**:

“6. Section 4 of the Act would be attracted only if a person knowingly lives on the earnings of the prostitution of any other person. The activity carried out in a given premises will amount to prostitution within the meaning of Section 2 of the Act only if sexual abuse by exploitation of the person is done for commercial purpose.

7. Section 4 of the Act does not punish or make the person liable for the acts done by the person who is running the brothel house. This Section does not make the person, who carries on prostitution for her own gain, liable for punishment, so also the person who is running the said premises. This Section is meant to punish those persons who are living on the earnings of the prostitute. The said provision cannot be invoked for prosecuting the persons who visit the said premises. Therefore, the ingredients of Sections 3 and 4 of the Act are not made out. In that view of the matter, continuation of proceedings against the petitioners in C.C.No.337 of 2008 on the file of the learned Special Judicial Magistrate of First Class, Yerramanzil, Hyderabad is nothing but abuse of process of Court.”

(ii) Paragraph Nos.4 and 5 in **Goenka Sajan Kumar**:

“4. Section 3 of the Act imposes punishment for maintaining a brothel house or allowing premises to be used as a brothel house. Section 4 imposes penalty for living on the earnings of prostitution. Section 5 deals with the procurement, inducement or inducing a person for the sake of prostitution. Section 6 of the Act speaks about detaining a person in the premises where prostitution is carried out.

5. None of these sections speak about punishment to the customer of a brothel house. Admittedly, the petitioner does not fall under the provisions of Sections 3 to 7 of the Act, as the petitioner was not running a brothel house nor did he allow his premises to be used as a brothel house. The

³ Criminal Petition No.312 of 2020, dated 20.1.2021

petitioner is not alleged to be living on the earnings of prostitution. It is also not the case of the prosecution that the petitioner was procuring, inducing or in dicing any person for the sake of prostitution nor is it the case of the prosecution that any person was earning on the premises where prostitution is carried out.”

7. In Criminal Petition No.2156 of 2022, another learned Judge following the earlier decisions referred to above and the decision in Criminal Petition No.6733 of 2021, dated 29.11.2021 (**Padala Venkata Sai Rama Reddy**) was pleased to take a similar view in identical facts and circumstances and allowed the criminal petition quashing the offences registered against the petitioner therein.

8. In the present case, as seen from the charge sheet, the petitioner visited the brothel house as a customer and in view of the same, and in the light of the above stated legal position, he is not liable for prosecution for the offences under Sections 3, 4 and 5 of ITP Act. In such view of the matter, the Criminal Petition is allowed and the proceedings against the petitioner in C.C.No.78 of 2020 on the file of the Court of Principal Junior Civil Judge, Mangalagiri are hereby quashed. Miscellaneous applications, pending if any, shall stand closed.

August 11, 2022.

vasu

NINALA JAYASURYA, J