

Serial No. 01 & 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 7 of 2022 with
Crl. Petn. No. 8 of 2022

Date of Decision: 22.08.2022

Shri Sunil Kumar Singha Vs. State of Meghalaya & Ors.
Shri Rami Sinha Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

In Crl. Petn. No. 7 of 2022

For the Petitioner/Appellant(s) : Mr. P.Yobin, Adv.
For the Respondent(s) : Mr. H. Kharmih, Addl. P. P

In Crl. Petn. No. 8 of 2022

For the Petitioner/Appellant(s) : Mr. P.Yobin, Adv.
For the Respondent(s) : Mr. H. Abraham, GA

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. On 18.10.2021, a complaint was lodged by one Women Police Sub-Inspector(WP/SI) K. R. Marak before the Officer In-Charge, Sadar Police Station, Shillong to the effect that on the same day, at about 6.30 pm two police personnel in plain clothes, while performing their duties at Jail Road and Police Bazar area spotted one girl and two males talking near Vishal

Mega Mart after which one of them went with the girl to the compound behind J.K. International Hotel, Jail Road which is suspected to be an area where brothel and places for soliciting sex workers for prostitution takes place. The said police personnel then followed the girl and her companions and saw them entered a room. Later, a search was conducted and the said girl was found to be in the company of Rami Sinha and Sunil Kr. Singha.

2. Accordingly, on receipt of the said complaint, a case was registered being Shillong Sadar P.S Case No. 240(10) 2021 under Sections 3(2)(a)(b)/4(1) of the Immoral Traffic (Prevention) Act, 1956 and initially four persons were arrested in connection with the said case, including the two petitioners herein. Later, another person was also arrested in this case. The girl, it appears is a minor. The stage of the case is under investigation.

3. Being aggrieved on account of being implicated in the said case, the petitioners herein have approached this Court with separate petitions under Section 482 Cr.P.C. praying before this Court to exercise its inherent power to quash the said complaint dated 18.10.2021 and the related Shillong Sadar P.S. Case No. 240(10) 2021.

4. Since the subject matter in the two petitions are identical inasmuch as the cause of action is the said complaint dated 18.10.2021(supra), this Court deems it fit and proper to take up the two petitions and to pass a common order herein.

5. Heard Mr. P. Yobin learned counsel for the petitioners who has submitted that the petitioners have been implicated in the above mentioned police case on the allegation that they have been found to be in the company of a girl for the purpose of prostitution which has therefore, attracted the provisions of Section 3(2)(a)(b) as well as Section 4(1) of the Immoral Traffic (Prevention) Act, 1956.

6. Mr. Yobin has also submitted that being found in the company of a girl is not an offence and even if assuming but not admitting that the allegation of being involved in prostitution is well founded, at best, the petitioners could be treated only as customers. The offences under Section 3(2)(a)(b) as well as Section 4(1) of the Immoral Traffic (Prevention) Act cannot be attracted or attributed to them.

7. In support of his contention, the learned counsel has cited the case of **Pravin Rana v. State of Karnataka: 2019 SCC Online Kar 3067** and also the case of **Dilip Jana v. State of West Bengal: 2009 SCC Online Cal 1569** where, in similarly situated cases as the instant case, the Hon'ble High Court reading into the provisions of Section 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, vis-a-vis the fact that the accused therein was found to be a customer of prostitution and in the case of Dilip Jana (supra), where the accused was caught red-handed by the police in the presence of independent witnesses from a hotel, while he was carrying on prostitution,

the Court found that no offence under Section 3, 4, 5 & 6 has been made out against the petitioner therein.

8. It is submitted that the FIR as far as the petitioners are concerned, be set aside and quashed as the allegations in the FIR does not disclose any offence committed by the petitioners herein.

9. Mr. H. Kharmih, learned Addl. P. P has submitted that the case against the petitioners have been registered under clause (a) of sub-section 2 of Section 3 and sub-section 1 of Section 4 of the Immoral Traffic (Prevention) Act, 1956.

10. The petitioners came to Shillong for the purpose of a recruitment rally in the Assam Rifles and they stayed at Sneha Kutir, Jail Road behind J.K. International Hotel, Jail Road. The petitioners, on a raid being conducted by the police at places suspected to be brothel and places where prostitution is being carried out, were found to be in the company of a girl in the room occupied by them. According to the learned Addl. P. P, the fact that they are occupier of the said room which was used as a brothel, they are, therefore, liable under the offences alleged against them.

11. Another limb of argument raised by the learned Addl. P. P is that under Section 5 of the said ITP Act, the fact that the petitioners have procured the said girl with or without her consent for the purpose of prostitution, their

action is therefore, attracted by this provision and as such, they are liable to be prosecuted.

12. Referring to the seizure lists in the records, the learned Addl. P. P has submitted that the police have also seized from the room where the petitioners were found, a number of condoms and currency notes which only fortify the assertion that they are involved in prostitution. It is, therefore, prayed that these petitions are devoid of merits and may be dismissed.

13. Mr. H. Abraham, learned GA appearing on behalf of the State respondent in Crl. Petn. No. 30 of 2022 has endorsed the submission of the learned Addl. P. P and has further submitted that besides the fact that the petitioners were caught in the act of prostitution, the girl in question was found to be a minor and as such, in course of investigation, the relevant provisions of the POCSO Act may be added, the petitioners may not be let off at this stage and the case be allowed to proceed in due course.

14. The submission and contention of the parties have been thoughtfully considered by the Court in this matter. What is required to be established is whether the petitioners have been able to make out a case for quashing of the said FIR and proceedings by exercise of powers under Section 482 Cr.P.C.

15. Facts as stated above need not be reiterated, suffice it to say that the petitioners were arrested on being found in the presence of a girl from a room

suspected to have been used for the purpose of prostitution. The police acting on a complaint have arrested five persons in all, including the two petitioners herein. The relevant provisions of the Immoral Traffic (Prevention) Act, 1956 directed against the petitioners are Section 3(2)(a)(b) and 4(1) of the said Act.

16. For easy reference, the above-mentioned provisions are extracted herein as:

“3. Punishment for keeping a brothel or allowing premises to be used as a brothel. —

(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 wilfully 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.

4. Punishment for living on the earnings of prostitution. —

(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years].”

17. The learned Addl. P. P who has laid stress on the point that in view of the provision of Section 3(2) (a) of the Act, the petitioners being caught in the room with the girl can be said to be ‘occupier’ to come within the meaning of clause (a) of sub-section 2 of Section 3, and for which they can therefore be prosecuted for keeping a brothel within the broad meaning of Section 3 cannot be accepted by this Court since this line of argument has constricted the intent and purpose of the objective of Section 3 as far as the meaning of ‘occupier’ is concerned. In this regard, the Hon’ble Madras High Court in the case of **Suseela v. State: 1982 CRI. L. J. 702** has held that when the prosecution proved the presence of only one girl in the premises and a single instance of prostitution, the premises cannot be held to be “used for brothel”. Solitary instance of prostitution in a place does not make the place a “brothel”.

18. In the case of **Nagaraju B J @ Raju v. State of Karnataka** cited by the petitioners, the Hon’ble Karnataka High Court, under similar facts and circumstances as the case of the petitioners herein has also observed that “...A person who visits brothel house only as a customer is not covered by any of the above provisions or any other provision of the ITP Act, 1956...”

19. In view of the authority laid down by the Hon’ble Madras High Court in the case of Suseela (supra), on bare reading of the FIR against the petitioners herein, it can be presumed that they could not have used the said

room as a brothel, not to speak of the fact that there is no evidence that they are living on the earnings of prostitution. As for the contention of the respondents that Section 5 of the ITP Act is attracted as far as the action of the petitioners are concerned, in this regard, reference can be made to the case of **Suresh Babu @ Arakkal Arjunan Suresh Babu v. The State of West Bengal & Anr.** wherein in C.R.R. 2363 of 2019, the Hon'ble Calcutta High Court vide order dated 13.06.2022, in a case where the facts and circumstances are almost similar to the case herein, where the petitioner therein who was on a visit to Kolkata, on 04.01.2019 had visited a place called ' Snowy Glow Family Saloon and Spa' for a massage and during the session, a raid was conducted by the police where he along with others were apprehended and arrested, he was later informed by the police that a case has been registered against the said Spa for violation of provisions of Sections 3, 4, 5, 7, 18 of ITP Act, read with Section 120B IPC, he being one of the accused therein. Upon approaching the High Court with a petition under Section 482 Cr.PC, vide the order mentioned above, the High Court at paras 14 and 15 of the same has observed as follows:

“14. Prostitution per se is not prohibited under I.T. (P)Act but it is also equally true that a “customer” may virtually encourages prostitution and may exploit the sex worker for money but in the absence of any specific allegation and materials, I have serious doubt as to how present petitioner (accused no. 3) who is according to prosecution case merely a “customer” can be convicted with the help of materials in C.D. and under the said provisions of law. From the statement of witness, specially statement of accused no. 4 (sex worker) as recorded under section 161 Cr.P.C., there is hardly any scope to say that present petitioner as “customer” had exploited the

accused no. 4 or said customer/petitioner encourages anyone for prostitution.

15. Having regard to the facts and circumstances of the present case and considering the materials that the petitioner was found in the alleged brothel as customer and that on the date of occurrence he only went there after coming from Dubai to have sex with a sex worker in lieu of money and in the absence of any evidence that he is living on the earning of any of the accused/sex worker or is a habitual visitor of the said place and thereby has exercised control, direction or influence over the movement of any of the sex worker against which can be said to be aiding or abetting their sex work or that he was habitually living with any of the accused sex worker, I find that the sections in which the cognizance has been taken by the Magistrate against the present petitioner is bad in law and the said cognizance is taken without considering the materials in the case dairy.”

20. The final argument raised by the respondents is that the girl in question is a minor and as such, the petitioners are liable under the relevant provision of the POCSO Act, cannot be taken cognizance of by this Court inasmuch as there is nothing in the FIR or the subsequent investigation wherein any provision under the POCSO Act was alleged to have been violated by the petitioners herein. The same is therefore, not the subject matter of the issues present in these proceedings.

21. In view of the observations made above, this Court is persuaded to come to the conclusion that nothing in the FIR discloses any offence against the petitioners herein and as such, the inherent power under Section 482 Cr.P.C. can be exercised in this regard.

22. These two petitions are accordingly found within merits and the same are hereby allowed.

23. The FIR and the related proceedings against the petitioners in connection with Sadar P.S. Case No. 240(10) of 2021 under Section 3(2)(a)(b)/4(1) of the Immoral Traffic (Prevention) Act, 1956 is hereby set aside and quashed.

24. It may be pointed out that the investigation and proceedings only with regard to the petitioners herein are quashed. The other accused against which the investigation and proceeding are also initiated, will however continue.

25. Registry is directed to send back the case dairy.

26. Petition disposed of. No costs.



Judge

Meghalaya
22.08.2022
"Tiprilynti-PS"