

**HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**  
**(SINGLE BENCH : HON. Mr. JUSTICE VED PRAKASH SHARMA)**

**M.Cr.C. No.11242 of 2016**

**Siddharth S/o. Shri Sanjay Pipada. ... Petitioner**

**Vs.**

**State of M.P. ... Respondent.**

**-X-X-X-X-X-X-X-X-X-X-**

**ORDER**

**(Passed on February, 2017)**

The extraordinary jurisdiction of this Court u/s. 482 of the Criminal Procedure Code, 1973 (hereinafter, for short, 'the Code'), is sought to be invoked against order dated 7.9.2016, whereby charges with regard to offences u/s. 5(1)(a), 5(1)(d), 6(1)(b) and 7(1)(b) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter, for short, 'the ITP Act') have been framed against the petitioner by learned Additional Sessions Judge, Ratlam in S.T. No.256/2015. Prayer has also been made for quashment of the FIR pertaining to Crime No.402/2015 registered at Police Station Industrial Area, Ratlam, out of which aforesaid Sessions Case has arisen.

2. The prosecution against 11 persons including the petitioner has been launched on the basis of allegations that on 5.7.2015, pursuant to a secret information received at Police Station Industrial Area, Ratlam, that prostitution for commercial purpose is being carried on at Hotel Heera Palace, Alkapuri, Ratlam; the then DSP, AJK, A.R. Khan laid a raid at the hotel; constable Rahul Jaat was sent to the hotel as decoy with a currency

note of 500 denomination. Allegedly, Rahul Jaat approached Kamlesh, the owner of the hotel, who was present at the counter and asked him to arrange a prostitute. Kamlesh, in response, showed him certain photographs on his mobile phone to select a girl. In the meantime, raid party reached the hotel. On a search being carried out, 4 women, one each in Room No.105, 201, 204 and 206 were found involved with certain male 'customers'. Petitioner – Siddharth, who was found in room No.105 with a woman – Anita was also taken in custody along with other persons. Certain used and unused condoms were also recovered from room No.105 as also from other rooms. A case was registered against the persons found involved in prostitution and immoral traffic of women. After investigation, a charge-sheet was filed before the competent Magistrate. Learned Additional Sessions Judge, who was assigned with the case, framed the charges against the petitioner, as stated hereinabove.

**3.** The quashment of FIR as well as charges (supra), that have been framed against the petitioner, is sought on the ground that the allegations made against the petitioner in the charge-sheet do not prima facie make out a case with regard to offences alleged under the ITP Act. It is contended that as regards charge u/s. 5(1) (a) of the ITP Act, there is no specific allegation against the petitioner that he procured a woman for the purposes of prostitution. Referring to the definition of 'prostitution' contained in Section 2(f) of the ITP Act, it is submitted that the allegations made by the Police, prima facie, do not disclose that sexual exploitation of a woman for commercial purposes was being made by the petitioner. It is contended that the ITP Act aims at

suppression of commercialized vice and not penalizing a person indulged in prostitution or prostitute itself. The further contention is that charges u/s. 5(1)(d), 6(1)(b) and 7(1)(b) of the ITP Act are groundless because there is no allegation against the petitioner that he caused or induced a person to carry on prostitution or that he detained a person in a room of the hotel with an intent that such person may have sexual intercourse with the petitioner. It is submitted that the hotel, which was raided by the police has not been shown as a place coming within the distance of 200 meters of any place of public religious worship, educational institution, hostel, hospital or nursing-home duly notified in that behalf by the competent officer. A plea of non-compliance of Section 15 of the ITP Act has also been raised. Reliance has been placed on a number of decisions referred to in the petition itself including *Kalyansundaram V/s. State by Inspector of Police : 1994 Cr.L.J. 2487* and *T. Jacob V/s. State of Kerala : AIR 1971 Ker. 166*. Lastly, it is submitted that in view of the pronouncement of apex Court in the case of *Satish Mehra V/s. Delhi Administration : (1996) 9 SCC 766* and *State of U.P. V/s. R.K. Shrivastava : AIR 1989 SC 2222*, it is a fit case for quashment of FIR and consequent proceedings in S.T. No.256/2015 including the charges (supra) framed against the petitioner.

4. Per contra, it is submitted by learned Public Prosecutor that the petitioner was caught red-handed in room No.105 with a woman and that apart, the petitioner, three other male persons with women were also found in three different rooms, and that used and unused condoms were also recovered by the police. The petitioner had not come out with a plea that the woman found in the room

was his past acquaintance and that she in that capacity was staying with him in that room. It is also contended that the pleas raised on behalf of the petitioner and the defence taken by him are a matter of trial. It is submitted that for framing the charge, a reasonable suspicion regarding complicity in the offences is sufficient and that, at the stage of framing of charge, prosecution is not required to show that offence is made out beyond reasonable doubt. It is contended that prima facie material is there in the charge-sheet to frame charges against the petitioner with regard to offences u/s. 5(1)(a), 5(1)(d), 6(1)(b) and 7(1)(b) of the ITP Act, therefore, prayer for quashment of FIR and the consequent proceedings is liable to be rejected.

5. Heard learned counsel for the parties and perused the record.

6. The ITP Act aims at preventing the age old vice of prostitution and hence incorporates deterrent provisions in respect of those who are involved in trafficking of women and girls, in particular.

7. Section(s) u/s. 5(1)(a), 5(1)(d), 6(1)(b) and 7(1)(b) of the ITP Act for which charges have been framed against the petitioner 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) .....

(c) .....

(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:”

**“6. Detaining a person in premises where prostitution is carried on –**

(1) Any person who detains any other person, whether with or without his consent -

(a) .....

(b) In or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person,

shall be punishable on conviction, 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:”

**“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) .....

(b) Which are within a distance of two hundred meters 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.”

8. Procurement or attempt to procure a person for the purpose of prostitution is an offence u/s. 5(1)(a) of the ITP Act. In **Blacks Law Dictionary** (Eighth Edition), word 'procurement' has been defined – (1) The act of getting or obtaining something; (2) The act of persuading or inviting another, esp. a woman or child, to have illicit sexual intercourse. In *Cheriyam vs. State : 1973 Cr.L.J. 839*, it has been held that the word 'procure' includes within its ambit not only the person who procures woman for others but also a person who procures woman for himself.

9. The law is settled that at the time of framing of charge, the Court on the basis of material available with the charge-sheet has to see whether a reasonable suspicion with regard to complicity in the alleged offences is made out or not. As held by the apex Court in the case of *State of M.P. V/s. S.B. Johari : AIR 2000 SC 665*, at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at a conclusion that the material produced is sufficient or not for convicting the accused. If the Court is satisfied that prima facie case is made out for proceeding further, then a charge has to be framed.

10. Viewed from the aforesaid angle, a perusal of the material placed before the Court along with the charge-sheet, a copy of which has been filed before this Court, reveals that on a tip off police force raided Hotel Heera Palace, Ratlam. It is further revealed that Kamlesh, the owner of the hotel, who was at the counter, accepted currency note in the denomination of 500 from Constable – Rahul Jaat, who was sent as decoy to procure a girl for

prostitution. Thus, going by the version emanating from the material available in the charge-sheet, the owner of the hotel was found involved in procuring the girls for prostitution for commercial purposes and also providing such girls to male customers. It is further revealed that the petitioner was found in room No.105 with a woman; apart this, used and unused condoms were also recovered. It does not transpire from the material available in the charge-sheet, nor it is the plea of the petitioner that the woman found in room No. 105 with him was his friend, paramour, relative or an acquaintance. Further, it does not transpire from the material available in the charge-sheet that the petitioner was staying in the hotel as an innocent customer. In a case, where allegations with regard to commercial sex are leveled, seldom direct evidence may be available with regard to exchange of money between the client and the prostitute for having sex. Therefore, in such cases, the Court to a considerable extent has to rely on the circumstantial evidence and if, the chain of circumstances prima facie indicated towards complicity of a person, then a charge can be framed.

**11.** In the instant case, as regards offence u/s. 5(1)(a) of the ITP Act and 5(1)(d) of the ITP Act, considering the allegation that a woman was found with the petitioner in room No.105, it can be inferred that she for gain of money was procured by the petitioner and was induced to indulge in commercial sex i.e. prostitution. Therefore, it cannot be said that learned trial Court has committed any error in framing the charge u/s. 5(1)(d) of the ITP Act because necessary ingredients are prima facie available in the charge-sheet.

**12.** Relying upon *T. Jacob's* case (supra), it is contended

on behalf of the petitioner that to constitute prostitution within the meaning of Section 2(f) of the ITP Act, the evidence be brought regarding more than one customer. The contention so raised cannot be accepted because, in the case of *In re. Ratnamala & another : AIR 1962 Mad. 31*, which has been referred to in the case of *T. Jacob* (supra), it has been held that the word 'promiscuous' used in the definition of word 'prostitute' in Section 2(f) of the ITP Act, implies 'indiscriminate' but this plural and indiscriminate sexuality '*will be a matter of inference from the facts*', and it is not necessary that the evidence of more than one customer of the prostitute should be adduced. The view taken by Madras High Court appears to be quite logical and I am inclined to agree with the same.

**13.** The next decision relied upon by learned counsel for the petitioner rendered by Madras High Court in the case of Kalyansundaram (supra) is primarily based on evaluation of material available in the charge-sheet. The Court was of the view that the evidence available on record did not show that there was prostitution, therefore, offence u/s. 5(1)(a) of the ITP Act is not made out. In the instant case, as per statement of various witnesses recorded u/s. 161 of 'the Code', four girls along with male clients were recovered from 4 different rooms. Apart this, the decoy sent by the police was also entertained by the manager/owner of the hotel for arranging the prostitute. Therefore, prima facie, from the material placed before the Court, it cannot be said that learned trial Court has committed any error in framing the charge for the offence u/s. 5(1)(a) and 5(1)(d) of the ITP Act.

**14.** As regards charge for the offence u/s. 6(1)(b) of the ITP



Act, it must be shown that the accused detained a person in any premises with an intent that such person may have sexual intercourse with a person who is not the spouse of such person. In the instant case, there is no specific allegation that the woman who was found with the petitioner in room No.105 of the hotel, was detained by the petitioner. Therefore, in absence of necessary ingredients as regards detention, charge for the offence u/s. 6(1)(b) of the ITP Act, prima facie, is not made out and to that extent, the plea raised on behalf of the petitioner for quashment of charge deserves to be accepted.

**15.** Again, as regards the charge for offence u/s. 7(1)(b) of the ITP Act, no notification issued by the competent authority, as stipulated in sub Clause (b), has been filed along with the charge-sheet to show that the hotel where prostitution allegedly, was being carried out, was situated within 200 meters of a religious place, educational institution, hostel or nursing home. Therefore, charge in that regard also, prima facie, could not have been framed against the petitioner. Hence, the plea in that regard deserves to be accepted.

**16.** The plea that the proceedings stand vitiated because of non-compliance of Section 15 of the ITP Act, is also not sustainable because, as held by the apex Court in the case of *Bai Radha V/s. State of Gujarat : AIR 1970 SC 1396*, non-compliance with Section 15 of ITP Act is curable irregularity and the trial is not vitiated unless it is shown that the accused was prejudiced.

**17.** In view of the aforesaid, petition is partly allowed. The charges framed against the petitioner in S.T. No.256/2015 for the offences u/s. 6(1)(b) and 7(1)(b) of the ITP Act, being

unsustainable, are hereby quashed. The petition, as regards prayer for quashment of the FIR and quashment of charge for the offence u/s. 5(1)(a) and 5(1)(d) of the ITP Act, is hereby dismissed.

The petition stands disposed of accordingly.

**( VED PRAKASH SHARMA )  
JUDGE**

Alok/-