

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH
ON THE 19th OF DECEMBER, 2022**

MISC. CRIMINAL CASE No. 34970 of 2022

BETWEEN:-

**NAMAN LADDHA S/O SHRI MURLI MANOHAR
LADDHA, AGED ABOUT 29 YEARS, OCCUPATION:
STUDENT HOUSE NO. 10, ASHTVINAYAK RAJBAGH 2
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI A.S. RATHORE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION MAHILA THANA
(MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. SEEMA MAHESHWARI, PANEL LAWYER)

Reserved On : 10.11.2022

Pronounced On : 19.12. 2022

This petition coming on for order this day, Hon'ble Shri Justice Satyendra Kumar Singh passed the following:

ORDER

Satyendra Kumar Singh, J.,

This petition under Section 482 of the Code of Criminal Procedure, 1973 has been preferred for quashment of FIR bearing

Crime No.08/2022, registered at Police Station Mahila Thana, Indore, District Indore against the petitioner for the offences punishable under Sections 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956 and subsequent criminal proceedings of RCT No.1226/2022, pending before the Court of JMFC, Indore , Distt Indore.

2. Brief facts giving rise to this petition are that on 06.01.2022 at about 21:22 hours, after receiving a secret information that prostitution is being carried out in Vijaynagar area at Atoms Salon and Skin Clinic, SHO Police Station Mahila Thana, Indore, Jyoti Sharma alongwith other police officials, Panch-witnesses and Punter carried out a raid at the premises referred to above. During the course of raid, petitioner and a lady; co-accused Valalakh were found in room no.1 of the spa center in compromising position. In other rooms, other co-accused persons were also found in compromising position, while co-accused personas Chandni and Sanjay who were found sitting on the counter. On inquiry, it was found that co-accused persons; Chandni and Sanjay were the in-charge of the premises and carrying out the prostitution. Mobile phones and other articles were seized from the possession of the petitioner and other co-accused persons and after completion of investigation, charge-sheet was filed against the petitioner for the offences punishable under Sections 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act,1956.

3. Learned counsel for the petitioner submits that under the scheme of Immoral Traffic (Prevention) Act, 1956, sexual exploitation or abuse of a person for commercial purpose and to earn the bread thereby keeping or allowing a premise as brothel and also when a person is carrying on prostitution in a public place or when a person is found

soliciting or seducing another person are not punishable. There is no such allegation against the petitioner. There is nothing to show that the petitioner exercised control, direction or influence over the lady's movement in the way, which can be shown to be aiding or abetting her sex work. Mere visiting the house of sex worker as customer cannot be presumed to be living on earning of sex workers. No offence is made out against the petitioner, and therefore, the FIR lodged against the petitioner as well as subsequent criminal proceedings pending against him are liable to be quashed.

To bolster his submissions, learned counsel for the petitioner has relied upon the judgements passed by the High Court of Gujrat in the case of **Vinod @ Vijay Bhagubhai Patel Vs. State of Gujrat [2017 SCC Online Guj 446 : (2017) 58 (4) GLR 2804]** and order passed by the High Court of Telangana & Andhra Pradesh in the case of **Genka Sajan Kumar Vs. State of Andhra Pradesh in Cr. Petition No. 4161 of 2014** and in the case of **Z.Lourdiah Naidu & anr. Vs. State of Andhra Pradesh in Cr. P. No.408 of 2011.**

4. Learned counsel for the respondent/State has opposed the prayer and submits that petitioner was found in brothel in compromising position with a lady. His act very well comes under the purview of the abatement, therefore, this petition is devoid of merit, and the same may be dismissed.

5. Heard learned counsel for both the parties at length and perused the record.

6. In the case of **Vinod @ Vijay Bhagubhai Patel Vs. State of Gujrat (supra)**, law relating to the Immoral Traffic Act has been

discussed exhaustively and the relevant extract is as follows :-

“15. Answering the first question is not difficult because the issue is no longer res integra. This Court, in the case of Umedsinh P.Champavat v. State of Gujarat, (2006)2 GLH 736, after placing reliance on an earlier decision of this very Court in the case of The State of Gujarat v. Bai Radha w/o Natwarlal Ramshankar and another, 9 GLR 278, held as under :

“9. Section 3 of the said Act provides punishment for keeping the brothel or allowing the premises to be used as brothel and on bare words of one of the co-accused, the petitioner could not have been prosecuted under this Act because as per the scheme of Section 3, it is obligatory on the part of the prosecution to show from evidence that the petitioner had kept brothel and he was responsible or liable for allowing a particular premises to be used as a brothel. When he was not there in the effective management of the hotel on the relevant date, no charge-sheet under Section 3 of the Act could have been filed against the present petitioner.

10. So far as as the offence punishable under Section 4 of the Act is concerned, it provides punishment for living on the earning of prostitution. Section says that any person over the age of 18 years who knowingly lives, wholly or in part, on the earnings of the prostitution (of any other person) is said to have committed an offence under the Act. In view of the details given by the petitioner as to his business activities and involvement in hotel and resort business and other businesses like mining etc., it would not be proper for this Court to accept the say of ld. APP that there is prima facie evidence to show that the petitioner has committed offence punishable under Section 4 of the Act.

11. *The petitioner has also been charged with the offence punishable under Section 5 of the Act which says that 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/she may for the purpose of prostitution becomes the inmate of, or frequent, or 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/her carrying-on, or being brought upto carry-on prostitution, or*
- (d) causes or induces a person to carry on prostitution, shall be punishable under the Act.*

It has been submitted that the evidence which has been collected by the investigating agency in the form of Statements of the co-accused and the so-called prostitutes, at least rules out applicability of clause (b), (c) and (d) in toto. It is not even the case of the prosecution that the accused is said to have committed an offence under clause (b), (c) or (d). What is alleged is that the petitioner has procured or has attempted to procure a person for the purpose of prostitution. The question of Law which falls for consideration of the Hon'ble Court is as to whether a customer or a person who enjoys sex with a prostitution can be said to have procured a person for the purpose of prostitution.

(ii) The word "procures" used in this section connotes that somebody other than the petitioner should procure the woman for him. Section 5(i)(a) of the Act can be invoked only against the procurer like the agent or a pimp and not against persons

like the petitioner because there is no allegation or the case that the petitioner was a person involved in procuring a woman. On the contrary, the case of the prosecution is that somebody else was procuring a woman or a girl and certain hotels were being used by them doing booking of rooms.

12. Ld. counsel Mr. Anandjiwala has drawn attention of this Court on the observations made by this Court in para-26 of the decision in the case of *State of Gujarat v. Bai Radha, w/o Natvarlal Ramshankar & Another* (9 GLR 261). It would be beneficial to quote the relevant para-26 which is as under:-

"26. Sec.5(1)(a) provides that any person who procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution, that person shall be punished as provided therein. In this respect also Mr. Nanavati's contention was that accused No.3 can be said to have procured a woman such as Bai Kanta for the purposes of prostitution to Kishan and that, therefore, he can be held liable for the offence under Section 5(1)(a) of the Act. The word "procure" is not defined under the Act, but we were referred to its dictionary meaning which says "To bring about by care or pains; also (more vaguely) to bring about, cause, effect, produce; to obtain by care or effort; to acquire; to obtain (women) for the gratification of lust; to prevail upon, induce, persuade (a person) to do something." Giving the normal meaning to the use of the word "procure" in clause (a) of sub-section (1) of Section 5, what is required is only that he must have obtained a woman or a girl for the purpose of prostitution for a particular individual."

Mr. Anandjiwala has placed emphasis on words "obtain a

woman or a girl for the purpose of prostitution for a particular individual" and it is argued that from these observations made, it is sufficiently clear that Section 5(i) (a) of the Act would not be attracted at all in the present case so far as the present petitioner is concerned.

13. The petitioner is also charged with the offence under Section 7 of the Act. Section 7 of the Act makes the prostitution in or in the vicinity of public places an offence. Firstly, the prostitution in itself is not an offence under the Act, save in the manner given in Sections 7 and 8. Firstly, the petitioner by any stretch of imagination cannot be charged with this offence under Section 7 of the Act because to attract the said section, the prosecution must prima facie show that the petitioner is carrying on prostitution. It is only when the first ingredient is satisfied then the question would be as to whether the prostitution is being carried out in or in the vicinity of public place. When Section 3 of the Act is not applicable, when Section 4 of the Act is not applicable to the present petitioner, there is no question of charging the accused with the offence punishable under Section 7 of the Act. When no formal raid was carried out at Hotel Taj Residency Umed and no part of the premises of the said hotel was found in actual use of such illegal activities, it would not be legal to continue the prosecution against the petitioner for using the public place for the activities of prostitution.

14. Section 9 of the said Act, on the face of it, is not applicable in the facts and circumstances of the present case. For attracting Section 9 of the Act, it has to be shown prima facie that the petitioner having position or authority over any person, i.e. a woman or girl causes or aids or abets the seduction for

prostitution of that woman or girl. The question again, at the cost of repetition, is the petitioner's position or authority over any such woman or girl. There is not a thread of any evidence even to remotely suggest that the petitioner taking undue advantage of his position or authority over any woman or girl, caused or aided or abetted the seduction for prostitution of that woman or girl.

15. Undisputedly, powers of this Court under Section 482 of CrPC are very wide. It is true that the same should be used sparingly and in rare case, where it is apparent from record that the prosecution has no case. The discretion for quashing the complaint or charge-sheet must be carefully used and the High Court must see that its decision in exercise of its power is based on sound principles. As per the settled legal position, as observed by the Apex Court, if FIR fails to disclose the commission of offence without anything being added or subtracted from recitals therein then the High Court would be absolutely justified in quashing the FIR or the chargesheet. In the present case, there is no legal evidence against the petitioner and, therefore, quashing of the FIR and the charge-sheet would be justified. The Court is also supposed to consider the nature of allegations made more particularly in the case which has been put forward against the petitioner accused. The Court is in agreement with the say of ld. counsel Mr.Anandjiwala that the ratio of the decision in the case of Bai Radha (supra) would help the petitioner and even on facts, it emerges that the prosecution instituted against the present petitioner is not even healthy one. Totally illegal implication in the offence is equal to a false implication and for such an act, the prosecuting officer/agency

can be held liable for malicious prosecution. But this exercise has to be made by the person falsely implicated before the competent forum in accordance with law. The petitioner is entitled to do it.”

16. In view of the above, I hold that the prosecution of the applicant herein for the offence under the Immoral Traffic (Prevention) Act is not maintainable. The applicant herein cannot be said to have procured a woman for the purposes of prostitution. ”

7. In view of the above legal position and so also in view of the order passed by the High Court of Telangana & Andhra Pradesh in the case of **Genka Sajan Kumar Vs. State of Andhra Pradesh** and in the case of **Z.Lourdiah Naidu & anr. Vs. State of Andhra Pradesh** and other cases cited by the learned counsel for the petitioner, it is apparent that the act of visiting to house of sex workers as customers is not punishable under Sections of 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956.

8. In the instant case, allegation alleged against the petitioner are very specific that he was found with a lady in a compromising position and was visitor there. It is nowhere mentioned that he was involved in the management of the premises or in any way assist the co-accused persons in controlling and managing the activities of the premises. Hence, in view of the above, the FIR in the instant case as well as subsequent criminal proceeding of RCT No.1226/2022 with respect to the petitioner is liable to be quashed.

9. Consequently, this petition under Section 482 of Cr.P.C. is allowed. FIR bearing Crime No.08/2022, registered at Police Station

Mahila Thana, Indore, District Indore against the petitioner for the offences punishable under Sections 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956 and subsequent criminal proceedings of RCT No.1226/2022, pending against him before the Court of JMFC, Indore , Distt Indore. is hereby quashed.

C.c as per rules.

(Satyendra Kumar Singh)
Judge

vibha/-

