

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION NO: 4274 OF 2022

Between:

1. Bellapukonda Venkateshwara Raju, S/o. B. Rama Krishna, aged 25 years, Occ Business. R/o. B-75, Madhura Nagar, Yousufguda, Hyderabad.
2. Thudi Dharma Reddy, S/o. T. Narayana Reddy, Aged 33 years, Occ Pvt. Employee, R/o. Flat No. 207, Arya Mitra Oak Tree Apts., Manikonda Township, Manikonda, Hyderabad

...PETITIONERS/ACCUSED No.8 & 10

AND

1. State of Telangana, Rep. by its Public Prosecutor, High Court of Judicature for the State of Telangana, Hyderabad
2. Mr. Y. Ajay Kumar, Detective Inspector of Police, P.S. S.R. Nagar, Occ Police Officer, C/o. P.S. S.R. Nagar, Hyderabad.

...RESPONDENTS/COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the entire proceedings against petitioners in PRC No. 36 of 2021 on the file of the court of learned III Addl. Chief Metropolitan Magistrate at Hyderabad.

I.A. NO: 2 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay of all further proceedings including the appearance of the petitioners in PRC No. 36 of 2021 on the file of the court of learned III Addl. Chief Metropolitan Magistrate at Hyderabad, pending disposal of the main Criminal Petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri M. Tarak Abhilash, Advocate for the Petitioner and the Assistant Public Prosecutor (TG) on behalf of the Respondent No.1 and none appeared for the Respondent No.2.

The Court made the following: ORDER

SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.4274 OF 2022

ORDER:

This Criminal Petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') to quash the proceedings in P.R.C.No.36 of 2021 on the file of III Additional Chief Metropolitan Magistrate, Hyderabad.

2. The petitioners herein are accused Nos.8 and 10 in the said Crime. The offences alleged against them are under Sections - 370, 370 (A) (2) of the Indian Penal Code, 1860 (for short 'IPC') and Sections - 3, 4 and 5 of the Prevention of Immoral Traffic Act, 1956 (for short 'PITA').

3. Heard Sri M. Tarak Abhilash, learned counsel for the petitioners and the learned Assistant Public Prosecutor appearing on behalf of respondents - State.

4. In the complaint, dated 02.04.2019, it is stated that at on receiving suo moto complaint from the *de-facto* complainant Mr.Y.Ajay Kumar, Detective Inspector, P.S.,

S.R.Nagar along with two mediators went to the spot and apprehended the petitioners herein, recorded their confession statements and seized their mobile phones etc. The allegations against the petitioners herein is that they are the customers.

5. Learned counsel for the petitioners, referring to the contents of the complaint, would submit that the petitioners never involved in the said offence. As per the contents of the complaint, the petitioners herein are only customers. In view of the same, the offences alleged do not attract against the petitioners. In support of the same, he has relied upon the decision in **Naveen Kumar v. The State of Telangana**¹. With the said submissions, he sought to quash the proceedings against the petitioners herein.

6. On the other hand, learned Assistant Public Prosecutor would submit that there is specific allegation against the petitioners herein. He would further submit that though the contents of the complaint lacks the ingredients of Section - 370 of the IPC and Sections - 3, 4 and 5 of the PITA, the same would constitute an offence under Section - 370A (2) of the IPC. He would further

¹ 2015 (2) ALD (C-1) 155 (AP)

submit that investigation is pending and the Investigating Officer has to investigate the crime by examining relevant witnesses and recording their statements. He has also placed reliance on the principle laid down by the High Court for the States of Telangana and Andhra Pradesh in **S. Naveen Kumar**¹.

7. In view of the said rival submissions, the undisputed facts are that the petitioners herein are accused Nos.8 and 10 in the aforesaid crime. In view of the same, this Court is of the opinion that the petitioners are only customers.

8. In view of the rival submissions, it is apt to refer to the provisions of Sections - 370 and 370A of the IPC and Sections - 3, 4 and 5 of the PITA, which are as under:

"370-A. Exploitation of a trafficked persons._

(1) xxxxx

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine."

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

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also 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 of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(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.

(2A) For the purposes of sub-section (2) it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case maybe, has knowledge that the premises or any part thereof are being used as a brothel, if, -

- a. a report is published in a newspaper having circulation in the area in which such person resides to the effect that the

premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

- b. a copy of the list of all things found during the search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

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.

(2) Where any person over the age of eighteen years is proved

- a. to be living with, or to be habitually in the company of, a prostitute; or
- b. to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or
- c. to be acting as a tout or pimp on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meanings of Sub-section (1).

5. Procuring, including 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;

Provided that if the person 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.

XXXXX

(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.

9. As discussed above, the petitioners herein are customers. Therefore, the contents of the complaint lack the ingredients of Section - 370 of the IPC and Sections - 3, 4 and 5 of the PITA. A customer to flesh trade cannot be treated as an offender under Sections - 3, 4 and 5 of PITA. There is no allegation against the petitioners herein that they have recruited, transported, harboured, transferred or received a person for the purpose of exploitation. In **Mohammad Riyaz v. The State Of Telangana**², the High Court for the States of Telangana and the Andhra Pradesh referring to the principle laid down in **S. Naveen Kumar**¹ relied upon by the learned counsel for the petitioners and **Vinod @ Vijay Bhagubhai Patel v. State of Gujarat** [2017 (4) GLR 2804] quashed the proceedings against the customer for the offences punishable under Section - 370 of the IPC and Sections - 3 to 5 of the PITA,

however, permitted the Magistrate concerned to proceed further for the offence under Section - 370A (2) of the IPC. Therefore, this Court is of the considered opinion that the contents of the complaint lack the ingredients of Section Sections - 3, 4 and 5 of the PITA, however, the investigation may go on for the offence under Section - 370(A) (2) of the IPC.

10. It is relevant to note that in **S. Naveen Kumar**¹ referring to the provisions of PITA, IPC and also the amendment to the IPC, held that this Court in exercise of its inherent power under Section - 482 of the Cr.P.C. to secure the ends of justice, can give a direction when the material placed by the prosecution i.e., charge sheet disclose the commission of offence under Section 370A of the IPC. In view of the same, the Investigating Officer can proceed with the investigation for the offence under Section - 370A (2) of the IPC against the petitioners herein, customers.

11. In view of the above discussion, the proceedings in P.R.C.No.36 of 2021 on the file of III Additional Chief Metropolitan Magistrate, Hyderabad are hereby quashed against

¹. Criminal Petition No.5803 of 2018, decided on: 27.06.2018

the petitioners herein - accused Nos.8 and 10 for the offences under Sections - 3, 4 and 5 of the PITA. However, the Investigating Officer may proceed with the investigation for the offence under Section - 370A (2) of the IPC against the petitioners herein - accused Nos.8 and 10.

12. The present Criminal Petition is accordingly allowed in part.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

SD/-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The III Additional Chief Metropolitan Magistrate, Hyderabad.
2. The Station House Officer, S.R. Nagar Police Station, Hyderabad.
3. One CC to Sri M. Tarak Abhilash, Advocate [OPUC]
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
5. Two CD Copies
6. One Spare Copy

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HIGH COURT

DATED: 29/04/2022



ORDER

CRLP.No.4274 of 2022

PARTLY ALLOWING THE CRIMINAL PETITION

[Handwritten signature]
31/05/22