

(2013) 03 AP CK 0026

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 1786 and 1909 of 2013

Arjun Rao

APPELLANT

Vs

The State of A.P.
 Irugula Nagarjuna Reddy Vs The
State of A.P.

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Immoral Traffic (Prevention) Act, 1956 — Section 2(f), 3, 3, 4, 4

Citation : (2013) 2 ALD(Cri) 337 : (2013) 3 ALT(Cri) 316

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Rizwan Ali Shaik in Criminal Petition No. 1786 of 2013, Sri. N. Chandrasekhar Reddy in Criminal Petition No. 1909 of 2013, Sri. N. Ravi Prasad in Crl.P. No. 1326 of 2013 and Sri. S. Surender Reddy in Crl.P. No. 5715 of 2013, for the Appellant;

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—Crl.P. No. 1786 of 2013 is filed u/s 482 of Cr.P.C. to quash the proceedings in FIR No. 769 of 2012 of Panjagutta Police Station, Hyderabad. Crl.P. No. 1909 of 2013 is filed u/s 482 of Cr.P.C. to quash the proceedings in C.C. No. 185 of 2011 on the file of the Court of III Metropolitan Magistrate, Cyberabad at L.B Nagar. Crl.P. No. 1326 of 2013 is filed u/s 482 of Cr.P.C. to quash the proceedings in C.C. No. 15 of 2013 on the file of the Court of Special Judicial Magistrate of First Class for Excise, Erramanzil, Hyderabad. Crl.P (SR) No. 9063 of 2013 is filed u/s 482 of Cr.P.C. to quash the proceedings in CC. No. 548 of 2012 on the file of the Court of Special Judicial Magistrate of First Class, Excise & Prohibition Court, Erramanzil, Hyderabad. In Crl.P. Nos. 1786 of 2013, 1326 of 2013 and Crl.P (SR) No. 9063 of 2013, the police filed charge sheet against the petitioners under Sections 3, 4, 5 and Section 7(1) of the Immoral Traffic (Prevention) Act, 1956 ("the Act" for brevity). In Crl.P. No. 1909 of 2013, the police filed charge sheet against the petitioners under Sections 3, 4 and 5 of

the Act.

2. In Crl.P. No. 1786 of 2013, the case of the prosecution is that on 08.01.2012 at about 21.30 hours, on receipt of credible information that immoral activities were going on in Flat No. 6-3-1149/3, Tulasi Plaza, B.S. Makta, Somajiguda, Hyderabad, the police raided the said premises and found one female person by name Jaridunbee @ Devi Priya along with the petitioner. In Crl.P. No. 1909 of 2013, the case of the prosecution is that on 22.08.2011 at about 16.30 hrs on receipt of credible information that immoral activities were going on at H. No. 11-13-131/A/1, Road No. 2, Margadarshi Colony, Kothapet, the police raided the said house and found that one Ramakrishna-A1 is maintaining the said brothel house and he was found waiting in the hall and also found accused Nos. 2 to 4 and two ladies by name K. Shirisha and M. Kavitha indulged in prostitution. In Crl.P. No. 1326 of 2013, the case of the prosecution is that on 19.01.2013 at 19.00 hrs on receipt of credible information that A1 was running a brothel house at Room No. 403, Hotel Sri Krishna Residency Lodge, Opp: SR Nagar Community Hall, S.R. Nagar, Hyderabad, after obtaining search warrant from Assistant Commissioner of Police, the police raided the said place and arrested accused Nos. 1 to 4. In Crl.P (SR) No. 9063 of 2013, the case of the prosecution is that on 04.03.2012 at 20.00 hours, on receipt of credible information that immoral activities were going on in Plot No. 7, Flat No. G3, Organic Apartment, Opposite Audi Showroom, Road No. 12, Banjara Hills, Hyderabad, the police raided the above premises and arrested A-2 and two female sex workers and four customers in the presence of mediators.

3. I have heard the learned counsel for the petitioners in all the Criminal Petitions and the learned Additional Public Prosecutor representing the State.

4. Learned counsel appearing for the petitioners urged the following contentions in support of his argument that the prosecution is not maintainable against the petitioners:

That in all the cases the alleged sex workers were not made accused. They were only shown as witnesses. Their statements recorded by the police u/s 161 Cr.P.C. do not reveal that the petitioners participated in sex with them in the respective premises. The only material placed on record is that the police raided the respective premises and found the petitioners with the women. There is no material to show that they participated in sex with the respective women. Therefore making the petitioners to face the trial do not serve any useful purpose, as there is no possibility for the case ending in conviction. Since there is no evidence showing that they indulged in sexual act with the women by paying money, mere seizure of some amount allegedly from the petitioners would not by itself establish that they had sexual intercourse with the said women by paying money.

Nextly, it is submitted that even if the entire allegation levelled against the petitioners is considered to be true, it will not attract any of the provisions u/s 3,

4, 5 and 7(1) of the Act and therefore, the proceedings are liable to be quashed.

5. On the other hand the learned Additional Public Prosecutor would submit that the petitioners can be prosecuted for the offence u/s 7(1) of the Act because according to the police witnesses, they were found in the company of the said women in the premises mentioned in the respective charge sheets.

6. As rightly contended by the learned counsel appearing for the petitioners, mere presence at a particular premises even if it is spoken to by the police witnesses at the trial would not establish that they indulged in sexual intercourse with the women mentioned in the respective charge sheets by paying money. Recovery of some amounts from the petitioners by itself does not lead to the conclusion that they indulged in sexual acts by paying money. However, the important question which requires to be considered is even if it is admitted that the petitioners indulged in sexual intercourse with the women by paying money whether they can be prosecuted for the offences under Sections 3 to 5 and 7(1) of the Immoral Traffic (Prevention) Act, 1956.

7. Section 3 of the Act deals with punishment for keeping a brothel or allowing premises to be used as a brothel. Section 4 of the Act deals with punishment for living on the earnings of prostitution. Section 5 of the Act deals with procuring, inducing or taking (person) for the sake of prostitution.

Therefore, the petitioners cannot be prosecuted for the offences under Sections 3, 4 and 5 of the Act, as the said provisions are not applicable to the petitioners since they are only customers.

8. The crucial question is even if it is admitted that the petitioners had sexual intercourse with the women in the respective premises by paying money whether they would be caught under the provisions of Section 7(1) of the Act.

9. Section 7(1) of the Act deals with prostitution in or in the vicinity of public place. It lays down as under.

(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises:--

(a) which are within the area or areas, notified under sub-section (3), or

(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.

In this context, it would be necessary to refer to the definition of the prostitution mentioned in Section 2(f) of the Act. According to the said provision, "prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly.

10. From the definition, it is therefore obvious that the prostitution in or in the vicinity of public places mentioned u/s 7(1) of the Act, has to be understood in the context of the definition of prostitution u/s 2(f) of the Act. Here, it cannot be said that the petitioners indulged in any sexual exploitation or the abuse of persons for commercial purposes. The police have shown the prostitutes as witnesses and made the customers as accused. In any event, mere having sexual intercourse by paying money does not attract "prostitution" mentioned in Section 7 of the Act. This Court, therefore, is of the considered view that the petitioners in all the cases are not liable for punishment under Sections 3, 4, 5 or Section 7(1) of the Act and therefore, they cannot be prosecuted. If they are made to face trial, it would cause undue hardship and embarrassment and according to this Court, it would result in miscarriage of justice. Therefore, the proceedings in FIR No. 769 of 2012 of Panjagutta Police Station, Hyderabad, in C.C. No. 185 of 2011 on the file of the Court of III Metropolitan Magistrate, Cyberabad at LB Nagar, in C.C. No. 15 of 2013 on the file of the Court of Special Judicial Magistrate of First Class for Excise, Yerramanzil, Hyderabad and in C.C. No. 548 of 2012 on the file of the Court of Special Judicial Magistrate of First Class, Excise & Prohibition Court, Erramanzil, Hyderabad, against the petitioners are hereby quashed and all the Criminal Petitions are allowed. Miscellaneous petitions, if any, pending in all the four Criminal Petitions shall stand closed.