
(2015) 12 KAR CK 0073

In the Karnataka High Court

Case No : Criminal Petition Nos. 1007/2015 and 1642/2014 and Writ Petition No. 60129/2014

Karthik Hegde and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 7

Citation : (2015) 12 KAR CK 0073

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : Asim Malik, Advocate for Rashmi Jadhav, Advocate, for the Appellant; B. Visweswaraiah, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J.—Though these petitions arise out of different crime numbers registered by different police, since the common question of law would arise in these three cases, they are taken up for disposal by a common order.

2. In all the three cases, the petitioners are charge sheeted in respect of the offences punishable under Immoral Traffic (Prevention) Act, 1956, (for Brevity, "the Act"). In Criminal Petition No. 1007/2015 the petitioner is arrayed as accused No. 4, in Criminal Petition No. 1642/2014 the petitioner is arrayed as accused No. 7 and in Writ Petition No. 60129/2014 the petitioner is arrayed as accused No. 2. In all the three cases, petitioners are charge sheeted for the offences punishable under Sections 3, 4, 5, 7 of the Act.

3. From the charge sheet papers, it emerges that all the three petitioners were arrested from the place of offence. However, in none of the cases, there is any incriminating material against the petitioners proving their indulgence in commission of offence under Sections 3, 4, 5 and 7 of the Act.

Sections 3, 4, 5 and 7 of the Act reads thus:

"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 which shall not be less than three years and not more than five years and 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.

(2-A) 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 may be, 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 any thing contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) 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 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 or 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 meaning of sub-section (1).

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) 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 in respect 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; (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.

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

(b) which are within a distance of two hundred metres 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.]

[(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable 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: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.]

(2) Any person who--

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), 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 may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine [which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year: Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

Explanation.--For the purposes of this sub-section, "hotel" shall have the meaning as in clause (6) of section 2 of the Hotel Receipts Tax Act, 1980 (54 of 1980).] [(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.]"

5. On a bare perusal and understanding of the above provisions, it is clear that the penal provisions are contemplated in respect of the offences for running a brothel or allowing premises to be used as a brothel or make a living on the earnings of the prostitution or actively indulge in procuring, inducing or taking the victim for the sake of prostitution or prostitution in the vicinity of public places. On scanning the material of all three cases, none of the witnesses have given statement touching the indulgence of these petitioners in the offences alleged. In that view of the matter, the prosecution against these petitioners cannot be sustained and is liable to be quashed in exercise of power under Section 482 of Cr.P.C.

6. Accordingly, petition is allowed. The Criminal case No. 28414/2014 pending on the file of VIII ACMM Court, Bangalore, as against the accused No. 4/petitioner in Criminal Petition No. 1007/2015, Criminal case No. 292/2011 pending on the file of 1st Metropolitan Magistrate Traffic Court, Bangalore as against accused No. 7 in Criminal Petition No. 1642/2015 and Criminal Case No. 851/2013 pending on the file of Magistrate Court, Bangalore City as against the accused No. 2 in Criminal Petition No. 60129/2014 is quashed.

7. In view of the disposal of the main petition I.A. No. 1/2015 in Criminal Petition No. 1007/2015 and I.A. 1/2015 in Criminal Petition No. 1642/2014 does not survive for consideration and accordingly, stands disposed of.

(Registry is directed not to publish the name of the petitioners)