

(2016) 01 AP CK 0011

In the Andhra Pradesh High Court

Case No : Criminal Petition Nos. 2572, 2853, 3955, 4983 and 10094 of 2014

Sahil Patel and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 165, Section 482
Immoral Traffic (Prevention) Act, 1956 — Section 10, Section 10, Section 11, Section 11, Section 2, Section 3, Section 3, Section 3, Section 4, Section 4, Section 4, Section 5, Se

Citation : (2017) 2 ALTcr 111 : (2017) 1 AndhLDCriminal 336 : (2016) CrLJ 2764

Hon'ble Judges : Dr. B. Siva Sankara Rao, J.

Bench : Single Bench

Advocate : Bethi Venkateshwarlu, for the Appellant;

Final Decision : Disposed Off

Judgement

Dr. B. Siva Sankara Rao, J.—CrI.P. No. 2572 of 2014:

1. The petitioners who are accused Nos. 3 and 4 out of 6 accused in C.C. No. 95 of 2014 on the file of the Spl. Judl. Magistrate of First Class for Excise Cases at Erramanzil, Hyderabad outcome of Cr. No. 1032 of 2013 of Panjagutta, Hyderabad, for the offences punishable under Sections 3, 4 and 5 of the Immoral Trafficking (Prevention) Act, 1956 (for short ITP Act) registered on the complaint of Y. Prakash Reddy, Inspector of Police, Commissioners Task Force, West Zone Team, Hyderabad-complainant herein; filed this petition under Section 482 Cr.P.C. seeking to quash the proceedings in C.C. No. 95 of 2014.

2. The factual back ground in the nutshell is that, on 05.12.2013 at 18.00 hours the complainant Y. Prakash Reddy, Inspector of Police, on receiving credible information that two persons are running brothel house in the premises No. Flat No. B-1, My Sweet Homes Apartments, Prem Nagar, Panjagutta, Hyderabad, obtained search proceeding from his superior officers, secured two mediators by

names 1. Prakash Jadav and 2) Sri Ramu and appraised them about the running of brothel house and along with his staff and panchas by names Haseena of Panjagutta P.S.(WPC 4302), M. Venkateshwar Goud and D. Jalender Reddy (Two sub Inspectors), J.V. Laxman Rao (HC 2653) and Tony Martin (PC 7982) and M. Venkatesh (PC 4394) of West Zone Task Force Team proceeded to the above premises, where he deputed one Sri Md. Sarwar Pasha (PC 2833) as a decoy by giving him Rs. 2500/- with proper instructions to give signals after verifying the antecedents in the premises, and on giving signals by the decoy PC, he along with staff, mediators and WPC raided the above said premises and apprehended two persons, on enquiry, they revealed their names as 1) K. Sridhar (A.1) and P. Murali (A.2) and four customers Sahil Patel (A.3), M. Shravan Kumar (A.4), K. Pavan Kumar (A.5) and Ramesh Solanki (A.6) and two female sex workers namely Kamal Takur and Sunitha Kaitha and then he recorded the confessional statement of the organizer K. Sridhar (A.1), in which he voluntarily confessed that he is native of Vijayawada, Krishna District and came to Hyderabad about 6 years back for livelihood and came in contact with one P. Murali (A.2) 3 years back at Public Garden, Nampally, Hyderabad and due to unemployment and financial problems, they hatched a plan to organize brothel house and in that process, the above premises on rent for Rs. 15,000/- p.m. about 3 months back and K. Sridhar (A.1) procured sex workers from various states to the premises and P. Murali (A.2) is organizing the brothel house and collecting money from the customers of Rs. 2,500/- to 3,000/- from each, also seized net cash Rs. 10,000/-, 25 condoms of Moods company and one cell phone from the possession of K. Sridhar (A.1), Rs. 3,000/- from the possession of P. Murali (A.2), also seized three cell phones, Rs. 3,200/- and 6 condoms of Moods company from the customers and two cell phones from the sex workers in the presence of panchas and took into custody all of them. On receipt of the said report, L.W.13 K. Ranga Subbaiah, Sub Inspector of Police, registered a case in the above crime for the offences supra and during the course of investigation, the L.W.14 N. Tirupatirao, has examined L.Ws.1 to 10 in detail and recorded their statements in which they corroborated with each other with the facts of the FIR later on admission of the commission of offences supra by the accused, arrested them. After completion of investigation, L.W.15 Inspector of Police, Panjagutta, Hyderabad filed chargesheet.

CrI.P. No. 2853 of 2014:

3. The petitioners who are accused Nos. 4 and 5 out of 5 accused in Cr. No. 22 of 2014 of Bowenpally Police Station, Hyderabad registered on 26/27.01.2014 at 0.30 hours by L.W.8 Thimmappa, Sub Inspector of Police for the offences punishable under Sections 3, 4 and 5 of the Immoral Trafficking (Prevention) Act, 1956 (for short ITP Act) on the report with enclosed panchanama as basis for it conducted by R.B. Rangaiah, Inspector of Police (L.W.9), Bowenpally Police Station, and for the remand of the petitioners among A.3 to A.5 vide remand report dated 27.01.2014 from which the learned Special Judicial Magistrate of First Class, for Excise Cases, at Erramanzil, Hyderabad, taken them to judicial

custody for the offences supra, filed this Criminal Petition under Section 482 Cr.P.C. seeking to quash the proceedings in the above crime.

4. The factual background in the nutshell is that, on 26.01.2014 at 21.00 hours on receiving credible information that one Sudheer Kumar (A.1), Sathya Sai Enclave Old Bowenpally (Native of Kadapa as per remand report of A.3 to A.5) was running a brothel house at Plot No. 81, Satyasai enclave, Old Bowenpally, the complainant R.B. Rangaiah Inspector of Police, obtained permission from his superiors, secured mediators for conducting raid and proceeded with his staff Santhosh Kumar PC 9726 (L.W.6 to act as decoy), WPC 7086 Smt. Shahanaz Begum (L.W.1) and the panchas to the above said place to verify the veracity of information, deputed one Santhosh Kumar (PC 9726) as decoy by giving two five hundred rupee notes in the presence of panchas with proper instructions to send a signal and on receiving positive signals from said Santhosh Kumar, they conducted raid on the said house and found a woman in the hall, and on enquiry, she disclosed her name and identify as Smt. T. Savithri of West Godavari district, and working as Organizer of the brothel house, in the said Flat running by them viz; one Sudhir Kumar (A.1) under whom she is working as Organizer and one Iqbal (A.2) used to procure the customers and sex workers on commission basis and she looks after the maintenance of the brothel house and they are living on the earnings of prostitution, that they use Skoda car bearing No. AP04 R 7007 and two wheeler Activa bearing No. AP 04 R 2178 for picking up the paramours and sex workers and further she revealed about a person and a lady in sexual enjoyment and said male and female persons came outside from one room and on enquiry the male person disclosed his name as Vinod Kumar (A.4) and the female sex worker as Smt. Aparna Shaha (L.W.3). Further that another male and female came out from second bed room and on enquiry they disclosed the names as Mohd. Aleem and the female sex worker as Smt. Abida Sheik (L.W.4) and another sex worker by name Preethadas Guptha (L.W.5), A.1 Sudhir Kumar and A.2 Iqbal are not present at the house as they stated went out before the arrival of police. The disclosure statement of A.3 Savitri, in the presence of mediators (L.W.1 N. Raghunatha Reddy and L.W.2 S.K. Bakshi) and seized net cash of Rs. 3,000/- in which two five hundred notes are tallied with the notes that were given to (L.W.6) decoy Santhosh Kumar PC and also seized condoms from the possession of A.3 (Savithri) and also seized one Samsung cell phone (9985892073) and Nokia cell phone (9030582637) from the possession of A.4 Vinod Kumar and also seized one Samsung cell phone 9396581923 and Nokia cell phone (2 cell phones) from the possession of A.5 Mohd. Aleem, under the cover of confession-cum-seizure panchanama of the accused and also recorded the statements of the sex workers (L.W.3 Smt. Aparna Shaha, L.W.4 Smt. Abida Sheik and L.W.5 Smt. Preetha Das Guptha), in which they stated that due to poverty they indulged in prostitution as the A.1 Sudhir and A.2 Iqbal, offered Rs. 10,000/- for 10 days. The accused persons A.3 Savithri, A.4 Vinod Kumar and A.5 Aleem were arrested and submitted to judicial custody on 27.01.2014 and sent sex workers Smt. Aparna Shaha, Smt. Sheik and Smt. Preetha Das Guptha

to Women Police Station, Begumpet for safe custody for the night of 26/27-01-2014, and showing the A.1 and A.2 as absconding. As per remand report of A.3 to A.5, the A.1 took the said flat on rental basis in the month of October 2013 and running this brothel activity without knowledge of house owner and A.1 and A.2 for the purpose used to contact customers through mobile phones and procure the sex workers.

CrI.P. No. 3955 of 2014:

5. The petitioners who are accused Nos. 5 to 7 out of 7 accused in Cr. No. 251 of 2014 Sanjeeva Reddy Nagar Police Station, Hyderabad registered on 16.03.2014 by C.V. Ramana Goud, Inspector of Police, for the offences punishable under Sections 3, 4, 5(1)(d) and 7(1) of the Immoral Traffic Prevention Act, 1956 (for short ITP Act) on the report with enclosed panchanama as basis for it, of Y. Prakash Reddy, Inspector of Police (L.W.1), Commissioners Task Force, West Zone Team, and from the remand report of the petitioners among the A.1 to A.7 vide remand report dated 16.03.2014 from which the learned Special Judicial Magistrate of First Class, for Excise Cases, at Erramanzil, Hyderabad, taken judicial custody of the accused, filed this Criminal Petition under Section 482 Cr.P.C. seeking to quash the proceedings in the above crime.

6. The factual background in the nutshell is that, on 16.03.2014 at 18.00 hours on receiving credible information that some persons were running brothel house at Plot No. 226, 1st floor, Kalyan Nagar, Phase-1, SR Nagar, Hyderabad, obtained search proceeding from his superior Officer, secured two mediators by names 1. Prakash Jadev and 2. S. Ramu, and a woman panch by name Sukeshini (P.C.4396) of S.R. Nagar Police Station and along with the above persons besides some others viz; D. Jalender Reddy, Sub Inspector of Police, V. Venkateshwarlu (HC 3586), G. Lokeshwar Rao (PC 9586), B. Yedukondalu (PC 9333), and P. Kiran Kumar (PC 9511) proceeded to said place by 19.40 hours and deputed B. Yedukondalu (PC 9333) as decoy with proper instructions to give signals after verifying the antecedents in the premises and after some time on receiving signals from him in the form of missed call, he along with staff, mediators and Women PC raided the said premises and apprehended two organizers, one sub-organizer, three customers and two female sex workers, on enquiry they revealed their names as organizers 1) Vattikoti Baji @ Raju 2) Durgam Bhasker Babu, Sub-Organizer namely Krishna Kumari, Customers namely 1) V. Prasad, 2) Syed Hussain 3) Syed Arif and two female sex workers 1) A. Swathi, and 2) Fathima and recorded their confessional statements, in which the organizer Vattikoti Baji confessed that he is native of Guntur district, studied upto 10th class and he came to Hyderabad about 5 years back for his livelihood and presently working as car driver in Hyderabad and residing at Mothi Nagar, Sanath Nagar, Hyderabad. He met with two persons Durgam Bhasker Babu and Krishna Kumari about three months back at SR Nagar, Hyderabad, due to financial problems they decided to organize brothel house and took the premises on rent for Rs. 15,000/- p.m. about one month back. He along with Durgam Bhasker

Babu were procuring sex workers to the premises and Krishna Kumari collecting money from the customers of Rs. 1,500/- to Rs. 2,000/- from each customer, and then he seized net cash of Rs. 6,600/- Condoms (5 in number) of Pollo Pharmacy company, Condoms (5 in number) of Skore company and one Condom of Kohinoor Company, Eight cell phones and other ID cards in the presence of panchs.

CrI.P. No. 4983 of 2014:

7. The petitioner who is accused No. 5 out of 5 accused in Cr. No. 171 of 2014 of Sanjeeva Reddy Nagar Police Station, Hyderabad registered on 21.02.2014 by N. Tirupati Rao, Inspector of Police (L.W.10), for the offences punishable under Sections 3, 4, 5(1)(d) and 7(1) of the Immoral Trafficking (Prevention) Act, 1956 (for short ITP Act) on the report and enclosed panchanama which is basis for it of N. Shanker (L.W.1), Detective Inspector of Police, Sanjeeva Reddy Nagar Police Station and from the remand of the petitioner among A.1 to A.5 vide remand report dated 21.02.2014, the learned Special Judicial Magistrate of First Class, for Excise Cases, at Erramanzil, Hyderabad, taken filed this Criminal Petition under Section 482 Cr.P.C. seeking to quash the proceedings in the above crime.

8. The factual background in the nutshell is that, the complainant N. Shanker, Detective Inspector of Police, Sanjeeva Reddy Nagar Police Station, on 21.02.2014 at 19.00 hours on receiving credible information that one lady by name Sandhya is running brothel house at Flat No. 102, 1st Floor, Mynane Apartments, Leela Nagar X Road, Hyderabad by keeping sex workers, he obtained search proceeding from his superior Officer, secured panchas 1) Rathul Kunwar 2) B. Kumar, proceeded to the said place along with his staff 1. V. Purushotham Reddy, 2) G. Ramachander (PC 8007), Ms. P. Sukeshini (WHC 4396), B. Alivelu (WHC 1726) and panchas and deputed V. Purushotham Reddy as decoy giving amount and sent him to the above said brothel house with instructions to give signals and after getting signals, he along with staff and panchas raided the said premises consisting one bed room, kitchen and hall, on entering the house they found a lady aged about 33 years and on enquiry she disclosed her name as Singavaram Sandhya (A.1) as Organizer, on enquiry, she informed that she has been organizing the brothel house by keeping the female sex workers for her known customers with the assistance of sub organizers 1) Kommineni Sunil Kumar (A.2), 2) Butti Rajesh (A.3), 3) Thawwalampudi Mangayamma (A.4), and she showed one female old person who disclosed her identity as Thawwalampudi Mangayamma, and another male person in which he disclosed his identity as Butti Rajesh and they have been assisting said lady in organizing the brothel house. When they knocked the bed room, they found one male person who disclosed his identity as Musku Damodhar Reddy (A.5), along with one victim Guttuloru Swapna, on enquiry she disclosed that she has been organizing a brothel house in the said premises by keeping sex workers and collecting an amount of Rs. 1,000/- from each customer with the assistance of A.3 to A.5 and used to give commission to the sex workers, that he took her into

custody and recorded her confession statement, seized net cash of Rs. 1000/-, one cell phone from her possession, seized one cell phone and one condoms, police from the possession of sub organizer Butti Rajesh (A.3), seized one condom packet from the possession of Sub Organizer Thawwalmpudi Mangayamma (A.4) and also seized one cell phone and one Hero Honda Passion bearing No. AP 28 BD 2551 from the possession of customer Muskku Damodar Reddy (A.5) under the cover of confession-cum-seizure panchanama in the presence of panchas, sub Organizer Kommineni Sunil Kumar (A.2) is absconding, then they brought the said accused persons and the victim women to police station.

Crl.P. No. 10094 of 2014:

9. The petitioners who are accused Nos. 3 and 4 out of 4 accused in C.C. No. 322 of 2012 on the file of the Spl. Judl. Magistrate of First Class for Excise Cases at Erramanzil, Hyderabad outcome of Cr. No. 86 of 2011 of Police Station Sanjeeva Reddy Nagar, Hyderabad for the offences punishable under Sections 5(1)(d) and 7(1) of the Immoral Traffic Prevention Act, 1956 (for short ITP Act) registered on the complaint of M. Ravinder Reddy (L.W.1), Inspector of Police, S.R. Nagar, Hyderabad-complainant herein; filed this petition under Section 482 Cr.P.C. seeking to quash the proceedings in the above.

10. The factual back ground in the nutshell is that, on 30.01.2010 at 0030 hours on receiving the complaint from M. Ravindar Reddy (L.W.1) Inspector of Police, S.R. Nagar (L.W.1), the Inspector of Police, S.R. Nagar, (L.W.10) on 29.01.2011 at 2200 hours, on credible information that a brothel house was being organized by one Upender Singh (A.1) at Flat No. 305, Babu Mansion, H. No. 7-1-297, Balkempet, Hyderabad, obtained search proceeding from his superior Asst. Commissioner of Police, Panujagutta Division, secured two mediators by names 1. K. Shashidhar and B. Chandra Shekhar and appraised them about the running of brothel house and drafted search proceedings in their presence u/sec.165 of Cr.P.C. along with Ravi Prasad PC 8174 (L.W.2), B. Hari Kumar P.C. 2909 (L.W.3), Lalitha WPC 4361 (L.W.4) and other staff proceeded to the above premises at 22.45 hours on 29.01.2011, entered into Flat No. 305, Babu Mansion, H. No. 7.1.297, Begampet, Hyderabad and conducted search. On entering the house, they found Upender Singh (A.1), and served copy of search proceedings to him, that they searched entire house i.e. two bed rooms, hall, kitchen, knocked one of the bed rooms, on that one pair came out of the room, on enquiry they disclosed their identity as Pradeep Kumar Mallik (A.2), a customer and another is Seethika Sauju, a sex worker and in another bed room two male person namely Rocky Joseph (A.3) and Imran Khan (A.4), who are the friends of Upender Singh (A.1) and waiting for chance, that he recorded the statement of Victim woman Seethika Sauji, in which she disclosed that about 15 days back said Upender Singh came in contact with her in Almas Restaurant, SR Nagar, and since then meeting frequently and she used to visit his flat and on the fateful day i.e. 29.01.2011 Upender Singh (A.1) contacted the said lady and invited her to his

flat for having sex along with his friends by offering her Rs. 1000/-, accordingly she agreed the same and she further stated that on the advise of Upender Singh (A.1) she is working as sex worker in the above house, on that he collected Rs. 1000/- and one cell phone make Reliance Black Cell No. 9394363463 from the possession of Upender Singh (A.1), one cell phone No. 9866604795 make LG Black from the possession of Rocky Joseph (A.3)-1st petitioner herein and one cell phone Nokia Model 1650 from the possession of Imran Khan (A.4)-2nd petitioner herein and condoms from the room. After that, he informed to their friend Swaraj regarding their apprehension, that basing on their statements as it is clearly established that Upender Singh (A.1) made said premises i.e. Flat No. 305, Babu Mansion, H. No. 7-1-297, Balkempet, Hyderabad as brothel house and the doing business with sex worker Seethika Souji and Pradeep Kumar Mallik and A.3 and A.4 petitioners herein are customers on that day, L.W.9 registered a case in the crime supra for the offences supra.

11. Heard learned counsel for the petitioners in all the criminal petitions and learned Additional Public Prosecutor representing the respondent-state and perused the material on record.

12. Since the point involved in all the criminal petitions is similar, these matters are taken up together for disposal.

13. The averments which are common in all the quash petitions are as follows:-

The petitioners are falsely implicated in the crime supra, leave about the contents of the Remand, Case Dairy at best reveal the petitioners are only customers for neither running the brothel house nor eaking out on the earnings therefrom and thus the crimes pending against them are liable to be quashed. It is also contended that Sections 3, 4 and 5 of ITP Act, do not attract against these petitioners even from said allegations and in this regard, they relied upon the reported judgments of this Hon'ble Court in Crl. P. No. 408 of 2011 dated 12.06.2013 and Lourdiah Naidu and another vs State of Andhra Pradesh , 2013 (2) ALD Crl 393, and also placed reliance on subsequent decision in Goenka Sajan Kumar vs The State of A.P. , 2015 (1) ALT (Crl) 85 AP and Crl.P. Nos. 5993 of 2013 and batch dated 25.06.2013 between Sanatana Nagaraju Vs. State of A.P. wherein this Hon'ble Court (another Bench respectively) was pleased to quash the cases against the respective petitioners therein for similar offences alleged.

14. No doubt, from the decisions supra, Sections 3 and 4 of the ITP Act no way applicable so far as the customers concerned. If any of them indulge in sexual enjoyment with the sex worker respectively and for any of them keeping or allowing premises as brothel house or habitually found in the company of sex workers or living on that earnings or detaining any person to carry prostitution or such premises within the notified and prohibited area it attracts any of Sections 3 to 11 of the ITP Act besides sections 370 and 370A of I.P.C. The alleged occurrences were after the Amendment by Act 13/2013 to the IPC and the

Schedule of Cr.P.C. which came into force with effect from 03.12.2013 incorporating Sections 370 and 370A of I.P.C. Needless to say the same is prospective in operation as observed by this Court in CrI.P. No. 4193 of 2015 dated 20.07.2015 between Saleh Mahfooz Vs. State of Telangana. As observed in Salehz Supra, once Section 370 and 370A IPC applies, leave about any application of Section 371 against any of the accused that too when the investigation is pending, there are no grounds to quash the respective crime proceedings much less to stay investigation. Further even coming to C.C. Nos. 95 of 2014 and 322 of 2012 concerned, merely because Sections 370 and 370-A IPC not mentioned in the police final reports or cognizance orders that is not by itself a ground to quash the case proceedings, but for to seek, for discharge if no grounds to frame charge before concerned Court to decide on own merits with reference to above penal provisions. Needless to say if it is a case for committal before the Court of Sessions any plea for discharge to arise.

15. In the result, these Criminal Petitions are dismissed. It is made clear that these observations will no way prejudice the rights of any of the petitioners or others in all the criminal petitions. In CrI.P. Nos. 2853 of 2014, 3995 of 2014 and 4983 of 2014 in the event of police filing final reports or any cognizance taken by the learned Magistrate, either to seek for discharge from any of the penal provisions in the Act and IPC respectively before concerned trial Court to consider on own merits including the scope of Sections 370, 370-A and 371 IPC besides Sections 2 to 11 of the ITP Act. In CrI.P. Nos. 2572 of 2014 and 10094 of 2015 since final reports filed and numbered as Calender Cases, to seek for discharge any of the penal provisions in the Act and IPC respectively to consider on own merits within the scope of Sections 370, 370-A and 371 IPC and Sections 2 to 11 of the ITP Act.

16. Consequently, miscellaneous petitions, if any pending in all these Criminal Petitions shall stand closed.