

**(2014) 03 KL CK 0107**  
**In the High Court Of Kerala**  
**Case No : Criminal M.C. No. 4994 of 2013**

Sreejith @ Ayyappan and Sanjeev S.

APPELLANT

Vs

State of Kerala

RESPONDENT

**Date of Decision :** 20-03-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Immoral Traffic (Prevention) Act, 1956 — Section 3 4 5 7 7(1)

**Citation :** (2014) 03 KL CK 0107

**Hon'ble Judges :** P. Ubaid, J

**Bench :** Single Bench

**Advocate :** Alan Papali and Sri. J. Vimal, for the Appellant; Seena Rakarishnan, Public Prosecutor, for the Respondent

**Final Decision :** Allowed

## Judgement

P. Ubaid, J.—The petitioners herein are the accused Nos. 4 and 5 in C.C. No. 326 of 2012 before the Judicial First Class Magistrate Court, Karunagappally involving the offences under Sections 3, 4, 5 and 7(2)(c) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "the Act" for short). The prosecution case is that when the police conducted a search in a building at Karunagappally belonging to the 1st witness in the case, the accused Nos. 1 to 3 and 6 to 8 were found indulging in promiscuous sexual intercourse, and these two petitioners were found just sitting there inside the building. It is not known whether these two petitioners had in fact indulged in such a sexual intercourse or whether anybody had seen them involving in such activities. Anyway along with other accused, these petitioners were also arrested by the police and crime was registered under the above sections. After investigation, the police submitted final report in the Court of the learned Magistrate, under the above Sections of the Act. Now the accused Nos. 4 and 5 are before this Court u/s 482 of the Code of Criminal Procedure, to quash the prosecution as against them, on the ground that prosecution under any of the Sections in the Act will not lie against them on the allegations made in the F.I.R. or in the final report.

2. The prosecution has no case that these petitioners are the persons having control or dominion over the alleged place of incident or building in any manner, or that they were found keeping a brothel, or allowing their premises to be used as a brothel. The prosecution has also no case that these petitioners are persons living on the earning of prostitution. There is also no allegation that the ladies found in the premises were brought or procured by these petitioners for the purpose of prostitution. In such a circumstance, a prosecution under Sections 3, or 4, or 5 of the Act will not lie against these petitioners. The other Section quoted by the police in the final report is Section 7(2)(c) of the Act. Even to attract the said Sub-section, the accused must be the keeper of any public place, or the tenant or lessee or occupier or person-in-charge of any premises referred to in Sub-section (1), or the owner or lessee or landlord of any premises referred to in Sub-section (1) of Section 7 of the Act. These petitioners will not come under any of these categories. Even as per the allegations in the final report, they were found simply sitting inside the building, either waiting for their turn, or after their purpose was over. If at all, the allegation is that these petitioners had indulged in promiscuous sexual intercourse in the alleged place of incident, they can be prosecuted only u/s 7(1) of the Act, as the persons with whom the other ladies who carried on prostitution indulged in sexual intercourse. But even to apply that Section, some conditions will have to be satisfied. One is that the alleged place of incident is an area notified under Sub-section (3) of the Act, and the other condition is that the place of incident is within a distance of two hundred meters from any place of worship or educational institution or hostel or hospital, nursing home or other public place notified in this behalf by the Commissioner of Police or the Executive Magistrate in the manner prescribed.

3. In this case, the prosecution has no allegation or case that the place of incident in this case is within any notified area or within a distance of 200 meters of any public place or public institution. The decision of this Court in K. Radhakrishnan Vs. State of Kerala, is exactly on the point. As discussed above, this Court finds that the prosecution now brought against these petitioners by the police cannot be legally sustained under any of the provisions in the final report, or even u/s 7(1) of the Act. I find that continuance of this prosecution in such a circumstance against them will be mere abuse of legal process. I also find that the prosecution as against these petitioners is liable to be quashed on the finding that such a prosecution cannot be legally sustained.

In the result, this petition is allowed. Prosecution against these petitioners as accused Nos. 4 and 5 in C.C. No. 326 of 2012 of the Judicial Magistrate First Class Magistrate Court, Karunagappally is hereby quashed u/s 482 of the Code of Criminal Procedure. The petitioners will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged.