
(2013) 06 AP CK 0110
In the Andhra Pradesh High Court
Case No : Criminal P. No. 408 of 2011

Z. Lourdiah Naidu and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Citation : (2014) 1 ALD(Cri) 322 : (2013) 2 ALD(Cri) 393

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : Vijaya Baskar Moola, for the Appellant;

Judgement

C. Praveen Kumar, J.—This petition is filed by the petitioners-A4 and A5 u/s 482 Cr.P.C. seeking to quash the proceedings in CC No. 337 of 2008 on the file of the learned Special Judicial Magistrate of First Class, Yerramanzil, Hyderabad. A charge-sheet is filed against the petitioners and two others for the offences punishable under Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 (for brevity, "the Act"). The allegations in the charge-sheet are that A1 and A2 are brothel organizers and both of them are running a brothel house in Flat No. 7A, Dhruvathara Apartment, Somajiguda, Hyderabad. The said premises was taken on rent by A1. On collection of an amount of Rs. 1000/- from each customer the accused used to send them to the guest house and out of the said amount a sum of Rs. 300/- is said to have been paid to the victim girls. Thus A1 and A2 are earning easy and illegal money by running a brothel house. The petitioners, who are A4 and A5, came to the said flat as customers as they were having link with A1. Petitioners used to visit the said premises as and when they come over to Hyderabad from their native place. On reliable information that the said premises was being used as a brothel house, the Inspector of Police, Panjagutta Police Station, raided the said premises on 3.6.2007 at 11.00 p.m. apprehended A2 to A5 in the said premises and seized money and mobile phones from the persons present there. On the basis of a report given by the Inspector of Police, a case in Cr. No. 413 of 2008 came to be registered against all the

accused. After investigation, the police filed charge-sheet.

2. Learned Counsel for the petitioners mainly submits that even accepting the allegations in the charge-sheet to be true, no offence under Sections 3 and 4 of the Act is made out against the petitioners. According to him, the Act is silent as to the offence committed by the customers who visit the said house. He thus submits that continuation of proceedings against the petitioners would be an abuse of process of law.

3. Learned Additional Public Prosecutor opposed the said application on the ground that the offences alleged to have been committed by the petitioners are grave in nature and this Court cannot interdict the proceedings by invoking its jurisdiction u/s 482 Cr.P.C.

4. Section 3 of the Act deals with the punishment for keeping a brothel or allowing the premises to be used as a brothel house. The said provision has been rightly invoked by the police against A1 and A2.

5. Section 4 of the Act deals with punishment for living on the earnings of prostitution. It would be relevant to extract Section 4 of the Act, which reads as under:

(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 meaning of sub-section (1)].

6. Section 4 of the Act would be attracted only if a person knowingly lives on the earnings of the prostitution of any other person. The activity carried out in a given premises will amount to prostitution within the meaning of Section 2 of the Act only if sexual abuse by exploitation of the person is done for commercial purpose.

7. Section 4 of the Act does not punish or make the person liable for the acts

done by the person who is running the brothel house. This section does not make the person, who carries on prostitution for her own gain, liable for punishment, so also the person who is running the said premises. This section is meant to punish those persons who are living on the earnings of the prostitute. The said provision cannot be invoked for prosecuting the persons who visit the said premises. Therefore, the ingredients of Sections 3 and 4 of the Act are not made out. In that view of the matter, continuation of proceedings against the petitioners in CC No. 337 of 2008 on the file of the learned Special Judicial Magistrate of First Class, Yerramanzil, Hyderabad is nothing but abuse of process of Court.

8. Similar view was taken by this Court in Crl. P No. 1230 of 2012 dated 20.4.2010. Accordingly, criminal petition is allowed and the proceedings against the petitioners in CC No. 337 of 2008 on the file of the learned Special Judicial Magistrate of First Class, Yerramanzil, Hyderabad are hereby quashed. The miscellaneous petitions, if any, shall stand closed.