

HIGH COURT OF TELANGANA**Bench: The Honourable Smt. Justice K. Sujana****Date of Decision: 3rd May 2024**

CRIMINAL PETITION No. 2740 of 2024

Bodempudi Leela Krishna Prasad ...PETITIONER**VERSUS****The State of Telangana ...RESPONDENT****Legislation:**

Section 482 of the Code of Criminal Procedure, 1973

Section 370(A) of the Indian Penal Code

Sections 3 to 5 of the Immoral Traffic (Prevention) Act, 1956

Subject: Criminal petition to quash proceedings against the petitioner, accused of engaging in activities related to prostitution under specified sections of the IPC and the Immoral Traffic (Prevention) Act.**Headnotes:**

Criminal Procedure - Petition to quash proceedings under Sections 3 to 5 of the Immoral Traffic (Prevention) Act and Section 370(A)(2) of IPC - Petitioner, accused as a customer in a brothel raid, seeks relief citing non-applicability of charges - Analysis hinges on distinctions between customers and traffickers/exploiters in law - Court distinguishes roles based on previous judgments and specifics of the legislative intent behind cited laws - Proceedings under Sections 3 to 5 of the Immoral Traffic (Prevention) Act quashed, but those under Section 370(A)(2) of IPC to continue [Paras 1-17].

Referred Cases:

- Thanna Bharagav Kumar Vs. State of Telangana crl.P.No.5999 of 2022 (AP HC)
- Dasari Venkatappaiah vs. the State of Telangana CrI.P.No.4751 of 2021 (AP HC)
- Gangasani Anil Reddy and another vs. The State of Telangana CrI.P.No.7219 of 2016 (AP HC)
- Chinthala Shiva Rao vs. State of Telangana CrI.P.No.10771 of 2023 (AP HC)

Representing Advocates:

Sri Mettu Shankar for the petitioner

Sri S. Ganesh, learned Assistant Public Prosecutor for respondent No.1-State

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner/accused No.5, to quash the proceedings against him in P.R.C.No.92 of 2023 on the file of IV Additional Junior Civil Judge-Cum-XV Additional Metropolitan Magistrate Court at Kukatpally, Medchal-Malkajgiri District, for the alleged offences punishable under Section 370(A) of the Indian Penal Code (for short 'IPC') and Sections 3 to 5 of the Immoral Traffic (Prevention) Act (for short 'the Act').

2. The brief facts of the case are that on 19.07.2022, at about 21:30 hours, on receiving credible information about organizing of prostitution at LIG 541, 7th Phase, KPHB, the Police raided the said premises and noticed that with intention to earn money in ease manner, accused Nos.1 and 2 along with accused Nos.3 and 4 procured the victims for participating in prostitution with the customers by offering attractive amounts. It is stated that on 19.07.2022 accused No.5 went to the said premises for prostitution and found with the victim at the said premises. As such, accused Nos.1 to 6 along with the victims have been taken into custody and seized cash and mobile phones. Based on the complaint, a case was registered vide Crime No.535 of 2022 before the KPHB Police and after completion of investigation, a charge sheet was filed vide P.R.C.No.92 of 2023 on the file of IV Additional Junior Civil Judge-Cum-XV Additional Metropolitan Magistrate Court at Kukatpally, Medchal-Malkajgiri District.

3. Heard Sri Mettu Shankar, learned Counsel for the Petitioner and Sri S. Ganesh, learned Assistant Public Prosecutor for respondent No.1-State.

4. Learned counsel for the petitioner submitted that since the petitioner/accused No.5 is a customer, the offence under Section 370(A) of IPC and Sections 3 to 5 of the Act, is not applicable. In this regard, he placed reliance on the common order of this Court in Criminal Petition No.5073 of 2023 and batch dated 16.08.2023. Therefore, he prayed the Court to allow the Criminal Petition by quashing the proceedings against the petitioner/accused No.5.

5. On the other hand, learned Assistant Public Prosecutor for respondent No.1-State opposed the submissions of the learned counsel for the petitioner stating that according to the prosecution, this petitioner is charge sheeted for the offence under Section 370(A) of IPC as the petitioner is the customer. In this regard, he placed reliance on the orders of this Court in ***Thanna Bharagav Kumar Vs State of Telangana***¹ and prayed the Court to dismiss the Criminal Petition.

6. In view of the rival submissions of both the counsel, this Court has perused the material available on record. Learned counsel for the petitioner mainly relied on the common order of the Court in Criminal Petition No.5073 of 2023 and batch, wherein at paragraph No.26 it is held as under:

“26. But, in the present cases, none of the witnesses/sex workers stated that they have been exploited sexually or of sexual abuse. In the absence of any material that the women are trafficked for the purpose of engaging for sexual exploitation, the offence under Section 370 (A)(2) I.P.C. will not attract against the customers. Further, the wording “trade to flesh” is not found in the said Section. As per Section 370 (A)(2) I.P.C., it is for the prosecution to always prove that the customer is also having reason inter alia to believe that the victim is trafficked, engages persons for sexual exploitation. Then only the said Section is attracted.”

¹ crl.P.No.5999 of 2022

7. A plain reading of the above would abundantly make it clear that in the aforesaid common order, neither the witnesses nor the sex workers admitted that they have been exploited sexually or of sexual abuse. As such, in the absence of statements of victims to the fact they have been trafficked for the purpose of prostitution to indulge the petitioner in the Act.

8. However, for better appreciation of the facts of the instance case, it is apt to refer Sections 370 and 370(A) of IPC, which reads as follows:

“370. Trafficking of person.—*(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by— First —using threats, or Secondly —using force, or any other form of coercion, or Thirdly —by abduction, or Fourthly —by practising fraud, or deception, or Fifthly — by abuse of power, or Sixthly — by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.*

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.”

“370(A) Exploitation of a trafficked Person.—

(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished

with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

- (2) *Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished With rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.”*

9. In judgment of this Court in **Thanna Bhargav Kumar** (Supra) at paragraph

Nos.11 and 13 held as under:

“11. Thus, by the above provisions, it is clear that whoever knowingly or having reason to believe that a minor or a person has been trafficked, engages such minor or person for sexual exploitation, shall be punished.

13. In the case on hand, the acts committed by the petitioner-Accused No.4 as per the contents of charge sheet squarely fall within the ambit of Section 370-A (ii) IPC. Therefore, this Court is of the view that the proceedings for the said offence are liable to be continued. No other ground is urged or established by the petitioner basing on which the proceedings can be quashed. Therefore, this Court considers it desirable to allow this criminal petition in part.”

10. In judgment of this Court in **Dasari Venkatappaiah vs the State of Telangana**² at paragraph Nos.7 to 9 held as under:

“7. Section 370(A)(2) of IPC deals with exploitation of a trafficked person. As per it, whoever, knowingly by or having person to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

8. As discussed above, the only allegation against the petitioner/A5 is that he has information from A1 and A4 with regard to availability of victims for the purpose of exploitation sexually, he went to Dolphin Hotel, and exploited the victim sexually. Thus, he is a customer.

9. In view of the above, this Court is prima facie of the opinion that the contents of the complaint as well as the remand report constitute the offence under Section 370(A)(2) of IPC, and as discussed above, the offences under Sections 3, 4 & 5 of Immoral Traffic (Prevention) Act, 1956 and Section 370 of IPC are liable to be quashed.”

² CrI.P.No.4751 of 2021

11. In judgment of this Court in **Gangasani Anil Reddy and another vs. The State of Telangana**³, it is held as under:

“In the case on hand, the petitioners, as per the prosecution version, went to the brothel house, paid money to A1 to have a sexual pleasure with the victims and had sexual intercourse.

On going through the contents of the charge sheet, it is clear that the petitioners/A2 and A3 being the customers/pimps are aware of the fact that the victims were trafficked for sexual exploitation and they have exploited them by paying money. Therefore, there are ingredients to consider that the petitioners have committed the offence under Section 370(A)(2) IPC and hence, the prosecution shall proceed to charge the petitioners for the offence under Section 370(A)(2) IPC”

12. In judgment of this Court in **Chinthala Shiva Rao vs.**

State of Telangana⁴, it is held as under:

“13. This Court in Criminal Petition No.5803 of 2018 held that: “Though the learned senior counsel for the petitioner contended that the judgment of this Court in “S.Naveen Kumar @ Naveen v. State of Telangana” did not lay down the correct law, but on analysis of provisions under Section 370 A (2) of I.P.C., it is clear that the petitioner allegedly came to brothel house and found in a room along with Sex worker, but the purpose is only to participate in sexual intercourse (prostitution) with sex worker. Such person is said to have engaged in sexual exploitation and the said sex worker is trafficked person. Therefore, the petitioner is liable to be proceeded in trial for the offence punishable under Section 370 A (2) of I.P.C. Even on reanalysis of the provisions, I find no other interpretation to sub-section (2) to Section 370 A of I.P.C. to refer the matter to any larger bench for authoritative pronouncement.”

14. This Court is also in agreement with orders relied by the learned Assistant Public Prosecutor in considering that the petitioners-accused, who were alleged to be customers were not liable to be prosecuted for the offences under Sections 3, 4 and 5 of PITA as well as Section 370 of IPC, but were liable to be prosecuted for the offence under Section 370-A(2) of IPC. Hence, the charges against these petitioners for the offences under Sections 3, 4 and 5 of PITA as well as under Section 370 of IPC are hereby quashed. But, however, the charge for the offence under Section 370-A(2) of IPC shall be continued against the petitioners.”

13. Though trafficking is not specifically defined in the Act, the same is defined in the explanation 2 in Section 370 of IPC, the consent of the victim is immaterial

³ CrI.P.No.7219 of 2016

⁴ CrI.P.No.10771 of 2023

in determination of the offence of trafficking. When the consent is immaterial the voluntariness of victims indulging in the said Act cannot be seen. Therefore, the observations of this Court in Criminal Petition No.5073 of 2023 and batch that the 161 statements of the victims showing voluntariness, is not applicable to the present case to the extent of Section 370(A) of IPC.

14. In view of the above discussion as well as the law laid down by this Court in **Thanna Bhargav Kumar (Supra 1), Dasari Venkatappaiah (Supra 2), Gangasani Anil Reddy and another (Supra 3) and Chinthala Shiva Rao (Supra 4)**, the proceedings against the petitioner/accused No.5 for the offences under Section 370(A) of IPC are liable to be continued.
15. Insofar as applicability of Sections 3 to 5 of the Act is concerned, it is apt to refer Sections 3 to 5 of the Act , which reads as under:

“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 of not less than two years and not more than five years and also 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.(3)Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) 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 are 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 a woman or girl 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.

(2) Where any person 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): Provided that no such presumption shall be drawn in the case of a son or daughter of a prostitute, if the son or daughter is below the age of eighteen years.

5. Procuring, inducing or taking woman or girl for the sake of prostitution.

(1) Any person who-

(a) procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution; or (b) induces a woman or girl to go from any place, with the intent that she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a woman or girl, or causes a woman or girl to be taken, from one place to another with a view to her carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a woman or girl to carry on prostitution; shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees.

(2) In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(3) An offence under this section shall be triable-(a) in the place from which a woman or girl is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such woman or girl is made; or (b) in the place to which she may have gone as a result of the inducement or to which she is taken or caused to be taken or an attempt to take her is made."

16. In view of the aforesaid provision of law, since petitioner/accused No.5 is found at the scene of offence in the capacity of customer,

petitioner/accused No.5 is not liable to be prosecuted for the offences under Sections 3 to 5 of the Act.

17. Accordingly, the Criminal Petition is partly allowed. Consequently, the proceedings against the petitioner/accused No.5 in P.R.C.No.92 of 2023 on the file of IV Additional Junior Civil Judge-Cum-XV Additional Metropolitan Magistrate Court at Kukatpally, Medchal-Malkajgiri District, for the offence punishable under Sections 3 to 5 of the Act, are hereby quashed. However, the proceedings against the petitioner/accused No.5 in P.R.C.No.92 of 2023 on the file of IV Additional Junior Civil Judge-Cum-XV Additional Metropolitan Magistrate Court at Kukatpally, Medchal-Malkajgiri District, for the offences punishable under Section 370(A)(2) of IPC, shall be continued.

Miscellaneous applications, if any pending, shall also stand closed.

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