

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF DECEMBER 2017

BEFORE

THE HON'BLE MR JUSTICE K N PHANEENDRA

CRIMINAL PETITION No.5059/2017

Between:

1. CHANDRU S
AGED 32 YEARS
S/O SHIVAPPA
R/AT 8TH CROSS, JIGANI
BENGALURU – 560 132.

2. SURESH
AGED ABOUT 36 YEARS
S/O MUNIRATHNAM
R/AT NO.155, 6TH MAIN
MANJUNATHA NAGARA, RAJAJINAGARA
BENGAURU – 560 156.

PETITIONERS

(BY SRI CHANDRAHASA RAI B, ADV.)

AND:

1. THE STATE BY MALLESHWARAM P.S.
BENGALURU, REPT. BY STATE PUBLIC
PROSECUTOR, HIGH COURT
BUILDING, BENGALURU – 560001.

2. NARAYANA GOWDA K
INSPECTOR OF POLICE
WOMEN AND NARCOTIC DRUGS
SQUAD CCB, N T PET
BENGALURU – 560 002.

... RESPONDENTS

(BY SRI SANDESH J CHOUTA, SPP II)

THIS PETITION IS FILED U/S.482 CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS ON THE FILE OF XLV ADDL. CITY CIVIL AND S.J., BANGALORE IN S.C.NO.554/2017 ARISING OUT OF CR.NO.176/2016 REGISTERED BY MALLESHWARAM POLICE STATION.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners are arraigned as accused nos.2 and 3 in C.C.No.22418/2016 on the file of LVI Addl. Chief Metropolitan Magistrate, Bengaluru City and later the same has been registered in S.C.No.554/2017 on the file of the XLV Principal City Civil and Sessions Judge, Bengaluru City arising out of Crime No.176/2016 for the offences punishable under Sections 3, 4, 5 and 7 of I.T.P.Act.

2. On careful perusal of the entire charge sheet papers, it is seen that these petitioners are the customers in brothel house found by the police at the time of raid. This Court had an occasion to deal with similar matters in the following cases:

- i) 2015(3) Crimes 281 (AP) (Goenka Sajan Kumar Vs. State of A.P. Rep by P.P. high Court of A.P.)
- ii) CrI.P. No.7056/2014 [Mohammed Rafi Vs. State of Karnataka]
- iii) CrI. P. No. 7110/2011 [Suraj Vs. State of Karnataka]
- iv) CrI. P. 5808/2016 [Pravesh Chatri Vs. State of Karnataka]
- v) W.P. No.56504/2015 [Mahesh Hebbar @ Mahesh Vs. The Station House Officer, Banaswadi Police Station]
- vi) CrI.P. No.9682/2016 [Aswath @ Naveen Vs. State of Karnataka]
- vii) CrI.P. 8055/2016 [Raghavendra @ Raghu Vs. State of Karnataka]
- viii) CrI. P. No.200782/2016 [Shivaraj Vs. State of Karnataka]

3. In all the above said decisions, this Court has considered that the offences under Sections 3,4,5 and 7 of the ITP Act and Section 370 IPC are not attracted, so far as the customers of a brothel house is concerned. In fact, this Court has consistently come to the conclusion after analyzing the above said provisions in

the above said cases, that the constitution of the offences are not made-out sofaras the customers are concerned.

4. This is also evident from the reading of the above said provisions that,-

Section-3 of the Act is a section which provides punishment for keeping a brothel or allowing premises to be used as brothel.

Section-4 provides for punishment of living on the earnings of the prostitution.

Section-5 provides procuring, inducing or taking person for the sake of prostitution.

Section-7 applies to prostitution and in or in the vicinity of public place.

(Emphasis Supplied)

5. Therefore, none of the above said provisions are attracted so far as the customers are concerned. Though it is felt by this Court on various occasions that

the customer virtually encourages prostitution, but in the absence of any specific penal provision, it cannot be said that he is liable for any prosecution for the above said offences.

6. In the above said circumstances, I do not find any strong reason to differ from the above said consistent view taken by this Court. There is no legal impediment to quash the proceeding.

7. Another important aspect brought to the notice of this Court by the learned counsel is that the investigation has been conducted by the officer incompetent to investigate the matter. According to Section 13 of the Act, only the officer who is of the rank of Police Inspector or above, who are specifically authorized by the Government, are entitled to investigate the offences under the ITP Act.

8. In this case, the Sub-Inspector of Police has investigated the matter and filed the charge sheet. That legal lacunae is also apparent on the face of the record.

9. In view of the above said circumstance, the following is passed:

ORDER

The petition is allowed. The entire proceedings in S.C.No.554/2017 on the file of the XLV Addl. City Civil and Sessions Judge, Bengaluru City for the offence under Sections 3,4,5 and 7 of the ITP Act and also under Section 370 IFC and all further proceedings therein, are hereby quashed.

Sd/-
JUDGE

Brn

KNPJ:
07.12.2017

ORDER

IN

CRIMINAL PETITION NO.5059/2017