

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.45499 of 2016

Arising Out of PS. Case No.-344 Year-2014 Thana- BARAUNI District- Begusarai

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Md. Raja @ Rameej Raja son of Md. Jahangir resident of Barauni, P.S. Teghra
District Begusarai.

..... ... Petitioner

Versus

The State Of Bihar

... ... Opposite Party

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Code of Criminal Procedure, 1973 – Section 482 - Immoral Traffic (Prevention) Act, 1956 - Sections 3/4/5/6 - Applicability of the Immoral Traffic (Prevention) Act - Non-compliance with Procedural Safeguards - Customer as an Accused - Irregularities vs. Infirmities - Scope of Immoral Traffic Act - Offences under Sections 3/4/5/6 of the Act require active participation in brothel-related activities or living off earnings from prostitution. Mere presence as a customer does not suffice - Non-compliance with Section 15(2) of the Immoral Traffic Act and Section 100(4) of CrPC affects the weight but not admissibility of evidence unless prejudice is shown - Courts must exercise caution before summoning an accused, particularly when evidence is circumstantial or lacking (Para 10).

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Appearance :

For the Petitioner/s : Mr.Diwakar Prasad Singh, Advocate
For the Opposite Party/s : Mr.Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-06-2024

Heard Mr. Diwakar Prasad Singh, learned counsel
appearing on behalf of the petitioner and Mr. Matloob Rab,
learned A.P.P. for the State.

2. The present quashing petition has been filed to
quash the order dated 26.02.2016 passed by learned Chief
Judicial Magistrate, Begusarai in connection with Barauni
P.S. Case No. 344 of 2014 corresponding to G.R. No.
3595/2014, whereby and whereunder cognizance of the
offence under Section 120B of the Indian Penal Code (in
short the 'I.P.C.') and Section 3/4/5/6 of the Immoral Traffic
(Prevention) Act, 1956 (hereinafter referred to as the "Act of
1956") was taken by learned Magistrate.



3. The brief facts of the case is that the informant, who was the Sub-Inspector, posted at Zero Mile Police Station, has alleged that while he was on patrolling duty alongwith other police personnel, reached near Bihar Nagar Parishad foreign liquor shop No. 24 and started search of the vehicle, where on search of one Car bearing Registration No. BR09P-3462, he saw three persons and a lady were present inside the car and doing illicit act/behaviour. They were apprehended by the police and, on query, they disclosed their name and address. The informant further alleged that the accused persons were committing illicit behaviour with a lady by locking themselves in a car, which constitutes a criminal offence under the provisions of Section 3/4/5/6 of Immoral Traffic (Prevention) Act. He alleged that due to non-availability of independent witness, Home Guard personnels were made the witness of the occurrence. Thereafter, on search of the accused persons, mobiles and cash of Rs. 11,000/- etc. were found and seized. The informant also seized the car and produced the arrested persons for taking action under Section 120B of the Indian Penal Code and



Sections 3/4/5/6 of Immoral Traffic (Prevention) Act, 1956.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner has been falsely implicated in the present case. It is submitted by learned counsel that the lady co-accused, was not known to this petitioner, as she took lift for a short destination which was given by the owner of the vehicle i.e. co-accused Raj Kumar Poddar. It is pointed out that no doubt the conveyance in the present case, the alleged car may be said as 'brothel' in view of section 2(a) of the Immoral Traffic Act, and if it is so, then the petitioner maximum can be said as a customer because he is not the owner of the vehicle in question. It is submitted that there were three other persons inside the vehicle beside this petitioner, where there is no specific allegation available against the petitioner as to involve in any indecent act or activities which can be said as 'immoral'. It is further pointed out by learned counsel that the cash belongs to the owner of the vehicle where nothing specifically surfaced during investigation as it was paid for fulfilling sexual lust as alleged. It is further submitted by learned



counsel that the facts of the case is nowhere convincing as to make out a *prima-facie* case under Section 3/4/5/6 of the Immoral Traffic Act, as alleged, and as such continuance of the proceeding would only amount to misusing the process of court of law, as mere presence of a person in brothel does not constitute any offence.

5. Learned counsel further submitted that the mandatory provision of Section 15 of the Immoral Traffic Act regarding search of the premises not appears to be followed in the present case. It is further pointed out that compliance of Section 100(4) of the Code of Criminal Procedure (in short the 'Cr.P.C.') also appears not followed regarding search and, on this ground alone, this criminal prosecution is liable to be quashed against the petitioner.

6. Learned counsel further relied upon the report of Hon'ble Allahabad High Court titled as **Dinesh Tiwari @ Dhirendra Kumar Tiwari Vs. State of U.P. through Principal Secretary, Home Civil Sectt. Lko. and another (Neutral Citation No. 2024 AHC-LKO-15780).**

7. Learned A.P.P. for the State, while opposing the



prayer of the petitioner, submitted that the petitioner was found inside the vehicle with a girl alongwith three other male accused persons and were found involved in doing indecent/immoral activities as per the statement of the eye witnesses of the occurrence who are the police personnel, whereas it is conceded that the same appears not specific against this petitioner.

8. It would be apposite to reproduce Section 15(2) of Immoral Traffic Act and Section 100(4) of the Cr.P.C. of which learned counsel for the petitioner has relied upon, are read as under:

"15(2). *Before making a search under sub-section (1), the special police officer [or the trafficking police officer, as the case may be], shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do:*

[Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.]"

"100(4). *Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of*



any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

9. So far as Sections **3, 4, 5 and 6** of the Immoral Traffic Act are concerned, whether a customer found in the 'brothel' is liable to be prosecuted under these sections are quoted hereinbelow for a ready reference:

"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 willfully 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.

[(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.]

(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 [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 2[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).

5. Procuring, inducing or taking 4[person] for the sake of prostitution.—*(1) any person who—*

(a) procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution; or

(b) induces a [person] to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a 4[person], or causes a [person] to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or



(d) causes or induces a 4[person] to carry on prostitution;

[shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,—

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

*[***]*

(3) An offence under this section shall be triable -

(a) in the place from which a [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

6. Detaining a [person] in premises where prostitution is carried on.—

(1) Any person who detains 2[any other person, whether with or without his consent],—



(a) in any brothel, or

(b) in or upon any premises with intent 3[that such person may have sexual intercourse with a person who is not the spouse of such person],

shall be punishable [on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years].

[(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.]

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,—

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.



(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl."

10. It would further be apposite to reproduce paragraph **14, 15, 16, 29 and 30** of the judgment of Hon'ble Allahabad High Court in the case of **Dinesh Tiwari** (supra) for better understanding of legal position in the given set of facts and circumstances, which reads as under:

"14. Hon'ble Apex Court in the case of **Kalp Nath Rai vs. State (through CBI); (1997) 8 SCC 732**, while interpreting Section 100(4) Cr.P.C. observed that there can be no legal proposition that evidence of police officer is unworthy of acceptance in case of absence of a witness during police raid. At the most, it would cast a duty on the court to adopt greater care while scrutinizing the evidence of the police officer. If the evidence of a police officer is found acceptable, then it would be the erroneous proposition that the court must reject the prosecution version, solely on the ground that no witness was present. Paragraph No. 88 of the above judgement is quoted as under:-

"88. *There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of*



*acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined. In **Pradeep Narayan Madgaonkar [(1995) 4 SCC 255 : 1995 SCC (Cri) 708]** to which one of us (Mukherjee, J.) was a party, the aforesaid position has been stated in unambiguous terms, the relevant portion of which is extracted below: (SCC p. 261, para 11)*

"Indeed, the evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigating or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation requires greater care to appreciate their testimony."

15. Similarly, in the case of **Sahib Singh vs. State of Punjab; (1996) 11 SCC 685**, while interpreting Section 100(4) Cr.P.C., the Apex Court observed that the absence of independent witness during the search would affect the weight of the evidence of police officer, though not its admissibility. In the present case, non-presence of independent witnesses, as required u/s 15(2) of the Act, was clearly explained by the police as no one was ready



to accompany them to search the house which was being used for prostitution. Therefore, unless a prejudice is shown to be caused to the applicant during trial by the applicant, the prosecution story merely on the violation of Section 15(2) of the Act cannot be thrown out.

16. Therefore, this Court is of the view that lacuna in search is a question that should be decided during trial and proceeding cannot be quashed only on the ground that there is irregularity or non-compliance of Section 15(2) of the Act while conducting the search of a house, being used for prostitution because in practical, none of the persons of locality comes forward to accompany the police in case of search of a brothel. If such ground is considered for quashing the proceedings under the Act, then most of the proceedings will be quashed without going to trial. Hon'ble Apex Court in the case of **D. Vinod Shivappa vs. Nanda Belliappa; (2006) 6 SCC 456**, also observed that in interpreting a statute, the Court must adopt the construction which suppresses the mischief and advance the remedy. This rule is laid down in **Heydon's Case (1584) 76 ER 637**. Therefore, **this Court also holds that the direction of Section 15(2) of the Act is directory in nature and not mandatory despite the use of the word "shall" in Section 15(2) of the Act.**

29. In the judgements mentioned above, relied upon by the applicant in support of his second contention, the Gujarat High Court, Karnataka High Court, as well as Andhra Pradesh High Court also observed that merely the presence of a person as a customer at a brothel would not attract the ingredients of offence u/s 3/4/5/7/8/9 of the Act. Paragraph No.5 of the judgement in **Goenka Sajan Kumar** (supra) reads as under:-



"5. None of these sections speaks about punishment to the customer of a brothel house. Admittedly, the petitioner does not fall under the provisions of Sections 3 to 7 of the Act, as the petitioner was not running a brothel house, nor did he allow his premises to be used as a brothel house. The petitioner is not alleged to be living on the earnings of prostitution. It is also not the case of the prosecution that the petitioner was procuring or inducing any person for the sake of prostitution, nor is it the case of the prosecution that any person was earning on the premises where prostitution is carried out."

30. Similarly, the Andhra Pradesh High Court, in the case of **Nartu Rambabu (supra)**, relying upon the judgement in **Goenka Sajan Kumar (supra)**, observed in paragraph No.8 that when a person visits a brothel as a customer, then he is not liable for prosecution for the offence [u/s 3/4/5](#) of the Act."

11. In view of aforesaid factual and legal submissions, as on the ground of search conducted in violation of Section 15(2) of the Immoral Traffic Act or in violation of Section 100(4) of the Cr.P.C., what maximum can be ascertained is the irregularity while searching a premise or any conveyance which may be termed as 'brothel' in view of Section 2(a) of the Immoral Traffic Act, which certainly, cannot be the only basis for quashing of the proceeding under Section 482 Cr.P.C., but when allegation



against petitioner is maximum of as a customer to visit a 'brothel' or merely present thereof then certainly in want of any conspiracy, he cannot be prosecuted under Section 3/4/5/6 of the Immoral Traffic Act.

12. In view of the discussion as made above, the impugned order 26.02.2016 as passed by learned C.J.M. Begusarai in connection with Barauni P.S. Case No. 344 of 2014, G.R. No. 3595 of 2014 is here by quashed and set-aside with all its consequential proceedings *qua* petitioner.

13. Accordingly, this application is allowed.

14. Let a copy of this judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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