

Court No. - 29

Case :- APPLICATION U/S 482 No. - 9161 of 2023

Applicant :- Dinesh Tiwari @ Dharendra Kumar Tiwari

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko. And Another

Counsel for Applicant :- Anshumali Srivastava, Mayank Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard learned counsel for the applicant, and Sri Arvind Kumar Tripathi learned A.G.A. for the State.

2. The instant application u/s 482 Cr.P.C. has been filed seeking quashing of the entire proceeding of Case No. 426 of 2007 (*State vs. Rashmi Srivastava & others*), arising out of Case Crime No. 137 of 2006, under Sections 3/4/5/7/8/9 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "Act"), P.S. Sarojini Nagar, District Lucknow, including the charge sheet No. 7 of 2006 dated 7.8.2006, pending before Judicial Magistrate-III, Lucknow.

3. Though the present application has been filed after a considerable delay, this is being entertained because question of law is involved here.

4. The facts, giving rise to the present impugned proceeding, are that on 11.6.2006, the police conducted a search of a house that belonged to one Haji, on the information received from an informer that some of the persons were conducting prostitution. During the search, the applicant was found in an intimate position with co-accused lady "S" (name changed), who was allegedly involved in prostitution in a locked room. As per the police, S.H.O. had seen the present applicant and one lady "S" in an intimate position through cracks in the door. Based on this search, an F.I.R. dated 11.6.2006 was registered against the accused persons, including the present applicant, as Case Crime No. 137 of 2006, under Sections 3/4/5/7/8/9 of the Act. The police, after investigation, had also submitted a charge sheet against the applicant and five other co-accused persons, u/s 3/4/5/7/8/9 of the Act on 7.8.2006, whereupon the learned C.J.M. also took cognizance on 10.8.2006, and the proceeding was registered as Case No. 426 of 2007.

5. The contention of learned counsel for the applicant is twofold:-

(i) that while conducting the search of the house in question, mandatory provision of Section 15(2) of the Act, which requires the presence of two local witnesses, was not followed, and there was a violation of Section 15 (2) of the Act; and

(ii) that as per the prosecution case, the applicant was simply a customer, and simply being a customer at any house that is being used for prostitution will not attract any penalty under the Act unless there is the involvement of the customer in the business of prostitution.

6. In support of his first contention, learned counsel for the applicant has relied upon the judgement of High Court of Karnataka, Kalaburagi Bench in the case of *Shivaraj vs. State of Karnataka (Criminal Petition No. 200782 of 2016)* and in support of his second contention learned counsel for the applicant has relied upon the judgements of Karnataka High Court in *Raghavendra @ Raghu vs. State of Karnataka (Criminal Petition No. 8055 of 2016)*, *Mahesh Hebbar @ Mahesh vs. The Station House Officer, Banaswadi, P.S. Bangalore (Writ Petition No. 56504 of 2015)*, *Babu S. vs. State by Kengeri Police Station Bengaluru (Criminal Petition No. 2119 of 2022)*, *Barath S.P. vs. State of Karnataka (Criminal Petition No. 1757 of 2022)* and *Suraj vs. State of Karnataka (Criminal Petition No. 7110 of 2011)*, the judgements of Andhra Pradesh High Court in *Salapu Venkateswara Rao vs. State of Andhra Pradesh (Criminal Petition No. 2156 of 2022)*, *Korada Subrahmanyam vs. State of Andhra Pradesh (Criminal Petition No. 6182 of 2022)*, *Goenka Sajan Kumar vs. State of Andhra Pradesh (Criminal Petition No. 4161 of 2014)*, *Nartu Rambabu vs. State of Andhra Pradesh (Criminal Petition No. 4289 of 2022)* and *Padala Venkata Sai Rama Reddy vs. State of Andhra Pradesh (Criminal Petition No. 6733 of 2021)*, the judgement of Gujarat High Court in the case of *Vinod @ Vijay Bhagubhai Patel vs. State of Gujarat (Criminal Misc. Application No. 8156 of 2017)* as well as the judgement of Madhya Pradesh High Court in the case of *Naman Laddha vs. State of M.P. (Misc. Criminal Case No. 34970 of 2022)*.

7. Per contra, learned A.G.A. submitted that as the applicant was caught red-handed during the search of a house that was being used as a brothel, therefore an offence under the Act is made out against him. It is further submitted that the applicant cannot be said to have committed no offence on being a customer because it is the customer who procures the prostitute for consideration of money to satisfy his lust. Therefore, ingredients of the offence u/s 3/4/5/7/8/9 of the Act are attracted.

8. After hearing learned counsel for the parties and on perusal of the record, two questions arise: (i) whether there was a violation of Section 15(2) of the Act while conducting a search of the house in question where the applicant was found as a customer of a prostitute. If yes, then as to what will be its effect on the impugned proceeding; and (ii) whether a person who was found as a customer at a place that was being used as a brothel can be held liable u/s 3/4/5/7/8/9 of the Act.

9. So far as the first question is concerned, it would be appropriate to quote Section 15 of the Act as follows:-

"15. Search without a warrant.—(1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer, as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect

of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(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.

(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this Section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.

(5) The special police officer or the trafficking police officer, as the case may be, after removing the person under sub-section (4) shall forthwith produce him before the appropriate magistrate.

(5A) Any person who is produced before a magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

Explanation.—In this sub-section, "registered medical practitioner" has the same meaning as in the Indian Medical Council Act, 1956.

(6) The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of, the search.

(6-A) The special police officer or the trafficking police officer, as the case may be, making a search under this Section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section and section 17-A, "recognised welfare institution or organisation" means such institution or organisation as may be recognised in this behalf by the State Government.

(7) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search under this Section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code."

10. From the perusal of above-quoted Section, it is clear that Section 15 provides if any place is searched without a warrant, then before searching, a special police officer or trafficking police officer is required to call upon two or more respectable inhabitants of the locality where the place to be searched

is situated and at least one of the persons shall be a woman who may be from the same locality or any other locality.

11. In the present case, it is admitted case in the F.I.R. as well as in the search memo that no person was ready to accompany the Special Police Officer during the search of the house in question and even at the time of preparing the search and recovery memos, no public witness was ready to sign, and the police party signed it. Therefore, the provision of Section 15(2) regarding the presence of two witnesses of locality, including a woman, was violated. Thus, the entire search, recovery and arrest in the present case become doubtful. But a question arises whether the violation of Section 15(2) of the Act is itself a ground for quashing of the proceeding.

12. Though in the judgement of Karnataka High Court in the case of *Shivaraj (Supra)*, relied upon by learned counsel for the applicant, the Hon'ble Single Judge quashed the entire proceeding. Hon'ble Apex Court, in the case of *Bai Radha vs. State of Gujarat; (1969) 1 SCC 43*, observed that in the absence of any prejudice, having shown by noncompliance with the provision of Section 15(2), proceedings or trial cannot be quashed. However, the Court has to be very careful and cautious in weighing the evidence where there has been such failure on the part of the investigating agency. Paragraph 10 of the above judgement is quoted as follows:-

"10. In conclusion it may be observed that the investigating agencies cannot and ought not to show complete disregard of such provisions as are contained in sub-sections (1) and (2) of Section 15 of the Act. The Legislature in its wisdom provided special safeguards owing to the nature of the premises which have to be searched involving inroads on the privacy of citizens and handling of delicate situations in respect of females. But the entire proceedings and the trial do not become illegal and vitiated owing to the non-observance of or non-compliance with the directions contained in the aforesaid provisions. The court, however, has to be very careful and circumspect in weighing the evidence where there has been such a failure on the part of the investigating agency but unless and until some prejudice is shown to have been caused to the accused person or persons the conviction and the sentence cannot be set aside. It may not be out of place to reiterate what was said in H.N. Rishbud and Inder Singh v. State of Delhi [1955 (1) SCR 1150] that a defect or an illegality in the investigation, however serious, has no direct bearing on the competency or the procedure relating to cognizance or trial of an offence and that whenever such a situation arises, Section 537 of the Code of Criminal Procedure is attracted and unless the irregularity or the illegality in the investigation or trial can be shown to have brought about a miscarriage of justice, the result is not affected."

13. Section 15(2) of the Act is *pari materia* with Section 100(4) of Cr.P.C., which also prescribes that before making a search, two or more independent and respectable inhabitants of the locality must be there. Section 100(4) of Cr.P.C. reads as under:-

"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."

14. Hon'ble Apex Court in the case of ***Kalpnath 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.

17. So far as the second question of whether a customer found in the brothel is liable to be prosecuted under Sections 3/4/5/7/8/9 of the Act is concerned, Section 3 of the Act provides punishment for keeping or managing or acting or assisting in the keeping or management of a brothel. For reference, Section 3 is quoted below:-

"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."

18. From perusal of Section- 3, it is clear that a customer cannot be said to be keeping or managing or acting or assisting in the keeping or management of a brothel because he simply comes and pays money to get a woman to satisfy his lust and nothing more.

19. So far as Section 4 is concerned, this Section provides punishment for a person who knowingly lives on the earnings of prostitution. For reference, Section 4 is quoted as under:-

"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 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)."

20. From the perusal of Section 4(1), it is clear that only those persons who either live on the earnings of prostitution or themselves prostitute or work for prostitution to attract customers as a tout or pimp or exercise control, direction or influence over the movements of a prostitute to aid, abet or compel for prostitution. Therefore, a customer will not in any manner fall within the Section 4 of the Act. As a result, any customer who is not earning money from prostitution or helping or abetting the prostitution for money will not be liable to be punished u/s 4 of the Act.

21. So far as Section 5 is concerned, to attract the liability under this Section, a person either procures or attempts to procure a person for prostitution or induces a person with the intention to make him an inmate of a brothel for prostitution or takes or attempts to take a person from one place to another place to carry on the prostitution or induces a person to carry on prostitution. For reference, Section 5 is quoted as under:-

"5. Procuring, inducing or taking 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 attempts to take a 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 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."

22. From the perusal of the above-quoted Section 5, it is clear that a person can be held liable under the said Section only if he procures, induces or takes a person for the sake of prostitution. Section 2(f) of the Act defines the word "Prostitution". For reference, the same is quoted as under:-

"2(f). "prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly"

23. From the definition of "prostitution", it is clear that if a person is sexually exploited or abused for commercial purposes (for earning money), only then will there be prostitution. If a person comes to a brothel and pays money for the satisfaction of his lust, then, at the most, it can be said that he procures a woman to satisfy his lust and not for commercial purposes. Therefore, even if a person procures a woman who is involved in prostitution by paying money to satisfy his lust, he cannot be said to procure or induce the woman for prostitution. Therefore, merely being a customer will not attract the liability u/s 5 of the Act.

24. Section 7 of the Act provides the liability if a person carries on prostitution and the person with whom prostitution is being carried on in the vicinity of any public place. For reference, Section 7 is quoted as under:-

"7. Prostitution in or in the vicinity of public places.—(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises, —

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner

of Police or magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

(1-A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable 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) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in subsection (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), 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 may be used for prostitution, or is wilfully a party to such use,

shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

Explanation.—For the purposes of this sub-section, "hotel" shall have the meaning as in clause (6) of section 2 of the Hotel-Receipts Tax Act, 1980 (54 of 1980).

(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued."

25. From a perusal of Section 7, it is clear that this offence can be said to be committed by a person if he carries on prostitution or he is helping in carrying on prostitution in any premises which is in the vicinity of public places. As mentioned above, a customer cannot be said to carry on prostitution or help the prostitution because he does not get involved in running the business of

prostitution. Even otherwise, if prostitution is not being carried on in a premises which is in the vicinity of any public place, Section 7 will not be attracted. Word "Public Place" has also been defined u/s 7(1)(a) & (b) of the Act that either the area has been notified as public place or that place is within a distance of 200 meters of any religious worship place, institution of education, hostel, hospital or nursing home, but in the present case, there is nothing on record, showing that the brothel, where the applicant was found as a customer, was in the vicinity of public place as mentioned u/s 7(1)(a) & (b). Therefore, no offence u/s 7 is made out against the present applicant who was simply a customer.

26. So far as Section 8 is concerned, this Section provides punishment for a person if he attempts or endeavours to attempt or attract the attention of any person for the purpose of prostitution in any public place. Therefore, this Section is for the person who is either a prostitute or pimp or touts or attracts in any manner the other person (customer) for the purpose of prostitution. For reference, Section 8 is quoted as under:-

"8. Seducing or soliciting for purpose of prostitution.—*Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not—*

(a) by words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:

Provided that where an offence under this Section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months."

27. From the perusal of Section 8, it is clear that this Section does not attract any liability on the customer found to be in any brothel. In the present case also, there was no allegation against the applicant that in any manner he was seducing or soliciting any person for the purpose of prostitution at any public place.

28. Section 9 of the Act provides punishment for those persons who have authority over any person, including a woman, and they aid or abet such person for prostitution. However, in the present case, it is undisputed that the applicant was not in the custody or authority or care over the lady "S", who was involved in prostitution. Therefore, Section 9 also does not attract any penalty for the person who was simply a customer without having any authority, charge or custody over the person who was involved in prostitution.

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.

31. In view of the above analysis, this Court is of the view that if a person visits a brothel, then, at the most, he may be said to be a procurer of a prostitute to satisfy his lust but not for the purpose of prostitution because acquiring a person for prostitution means sexual exploitation or abuse for commercial purposes and not for any other purpose which does not have any commercial purpose or earning money. Therefore, this Court answered both the questions raised in this case. **First**, a search conducted in violation of Section 15(2) of the Act can be said to be irregular but this ground cannot be the basis for quashing the impugned proceeding u/s 482 Cr.P.C. Still, this ground is available during trial, which can be decided on the basis of evidence, which may ultimately make the search doubtful. **Second**, a customer who visits the brothel will not be liable u/s 3/4/5/7/8/9 of the Act.

32. In view of the above analysis, this Court holds that no case u/s 3/4/5/7/8/9 of the Act is made out against the present applicant, therefore, the impugned proceeding of the Case No. 426 of 2007 (*State vs. Rashmi Srivstava & others*), arising out of Case Crime No. 137 of 2006, under Sections 3/4/5/7/8/9 of the Act, P.S. Sarojini Nagar, District Lucknow, pending before Judicial Magistrate - III, Lucknow, is hereby quashed.

33. Accordingly, the application is **allowed**.

Order Date :- 22.2.2024

Vandana