

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3306 of 2022

Debal Banerjee @ Debdal Banerjee @ Debdulal Banerjee

Vs.

The State of West Bengal

For the Petitioner : Mr.Md. Zohaib Rauf
Mr. Abdul Zahid
Mr. Md. Siraj Munir
Mr. Younis Sultan

For the State : Mr.Rudradipta Nandy
Mrs. Rita Dutta

Heard on : 30.09.2024

Judgment on : 11.11.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. Petitioner herein has prayed for quashing of proceeding being CGR Case no. 4350 of 2019, pending before learned Chief Judicial Magistrate Alipore, on the ground that being a customer he is not liable to be prosecuted or charge-sheeted under any of the provisions of the Immoral Traffic (prevention) Act 1956 (in short Act of 1956).

2. The allegation against present petitioner is during a raid conducted on 8th December, 2019 the petitioner was found in compromising position with a woman in a brothel running under the guise of a 'family saloon and spa'.

3. After completion of investigation police has submitted charge-sheet against all the accused person including the petitioner herein under section 3,4,5,7,18 of the Act of 1956 on 31.06.2022.

4. On careful perusal of the entire materials in the case diary, it is seen that the petitioner herein has been arraigned as accused no. 4 and the allegation made against him is that he was found at the brothel house under Bhabanipur P.S., as a customer.

5. Needles to say that section 3 of the Act of 1956 provides punishment for keeping or managing or acting or assisting in the keeping or management of a brothel. Accordingly a petitioner who is admittedly a customer can hardly be said to be keeping or managing or acting or assisting in the keeping or management of the brothel house because materials in the case diary clearly reveals that he paid money to get a women to satisfy his lust and nothing more.

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. This section actually meant to punish those persons who are living on the earning of the prostitute. As such the said Provision can be invoked for prosecuting the persons who are living on the earnings of "prostitution" 'as defined under section 2 (f) of the Act. There is no such allegation against the present petitioner nor any such material has been collected during investigation to

attract the allegation that the petitioner herein indulged in sexual exploitation of abusing persons for commercial purpose in order to implicate him under section 4 of the act of 1956.

7. Now so far as section 5 of the Act of 1956 is concerned it runs as follows:-

“5. Procuring, inducing or taking 4 [person] for the sake of prostitution.—

(1) any person who—

(a) procures or attempts to procure a 4 [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 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 1 [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.”

8. It is argued by learned public prosecutor on behalf of the State that since the word “procure” as used in section 5 has not been defined in the Act of 1956, therefore the word has to be understood in the context of the object of the statute which the legislature intends to achieve. Referring the object and reasons of the statute, Mr. Nandy contended that the object of the Act is to prevent commercialization of

the vices and traffic among women and girls. Accordingly in its proper interpretation the word 'procure' is to be understood. Thus procurement implies the person, who gets or obtains domain over a person for the purpose of prostitution and in that view of the matter, a customer also comes within the purview of the section 5 of the Act. In this context he relied upon the judgment of Kerala High Court, in **Abijit Vs. State of Kerala** decided on 21st December, 2023.

9. In this context it is to be reiterated that section 5 of the Act of 1956 provides punishment for procuring, inducing or taking person for the sake of prostitution. The word 'prostitution' has been defined in section 2 (f) of the Act which means the sexual exploitation or abuse of persons for commercial purposes. So to attract the said provision sexual exploitation for commercial purposes and/or abuse for commercial purpose is a must. The word exploitation has not been defined in the Act of 1956 but section 370 of the Indian Penal code which deals with trafficking of a person, provides in explanation (I), that the expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation or slavery or practices similar to slavery, servitude or the forced removal of organs.

10. In the present context on bare perusal of the statements of the alleged victims, recorded under section 164 Cr.P.C. it clearly reveals that all the aforesaid alleged victims have unequivocally stated before the Magistrate that they had joined in the profession voluntarily and to earn livelihood to maintain their children and no one had forced them to join in the profession nor any allegation have been made by them

which may amount to exploitation or abuse for commercial purpose. Accordingly in the present context section 5 of the Act of 1956 has also got no application against the present petitioner.

11. Now so far as section 7 of the Act is concerned, it provides

“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, hotel, 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. (1A) 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 subsection (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 2 [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.]”

12. On a bare perusal of aforesaid section 7 it is clear that the section makes prostitution in certain different areas as punishable which are

- (i)** areas notified by the state government under section 7 (3)
- (ii)** areas that are within the distance of two hundred meters from any place of public religious worship educational institutions, hotel, hospital or nursing home and
- (iii)** Public place of any kind which are notified by the commissioner of police or magistrate in the manner prescribed.
- (iv)** Said section 7 penalizes firstly the person who carries on prostitution and secondly the person with whom such prostitution is carried on.

13. Mr. Nandy learned counsel for the State argued that the words used in section 7(1) ‘*person with whom such prostitution is carried on*’ is significant and it has to be read along with the definition of “prostitution” given in section 2(f) of the Act, which states about exploitation or abuse of

person for commercial purposes. Accordingly he argued that the person who exploits or abuses the prostitute is the person with whom the prostitute carries on prostitution. According to Mr. Nandy by the amendment made w.e.f. 26.01.1987, the legislature has intended that the customer is also to be brought within the purview of penal provisions. In this context he relied upon a judgment of Kerala High Court in ***Mathew Vs. State of Kerala, 2022 Live Law (Ker) 639.***

14. As I have stated above that section 7 makes it clear that such 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. If prostitution is not being carried on in a premises which is in the vicinity of any public place, section 7 may not have any application.

15. In the present case the only incriminating material relied upon by the prosecution to prosecute the present petitioner/customer under section 7 of the Act is one building plan of the said house wherefrom the petitioner was arrested. The statement of the victims were recorded during investigation. From the record it appears that there is no material on record even after completion of investigation, to demonstrate that the victim was procured or any attempt was made to procure the victim for the prostitution by the present petitioner/customer. Moreover, said building plan which has been collected during investigation does not disclose that the said brothel house which was running under the guise of 'spa and family saloon', and wherefrom the petitioner was allegedly found in compromising position as a customer, situates in the vicinity of public

place as mentioned under section 7 (1) (a) or (b) of the Act of 1956. Accordingly the term '*persons with whom such prostitution is carried on*' as mentioned in section 7, even if given a wider connotation, even then it has got no application in respect of the present petitioner, since it does not fulfill the conditions as mentioned in section 7 (1) (a) or (b). Needless to say that the offence under section 7 is maintainable only if the other conditions of the said section 7 are satisfied. In such view of the matter section 7 has also got no application against the present petitioner.

16. Section 18 of the Act 1956 which deals with closure of brothel and eviction of offender from the premises, might have any applicability for other accused persons, but in the present context it is not the case of the prosecution that petitioner is in any way connected with the ownership or possession of the said alleged brothel house.

17. In view of such discussion I am constrained to conclude that continuance said criminal proceeding any further against the present petitioner would be an abuse of process of the court and there is hardly any chance of conviction of the present petitioner at the end of trial because the materials available so far in the case record including the case diary clearly suggests that the above mentioned section of the Act of 1956 or section 120B of the IPC have no manner of application against the present petitioner.

18. Thus **CRR 3306 of 2022 is allowed.**

19. The impugned proceeding being CGR Case No. 4350 of 2019 pending before the court of learned Chief Judicial Magistrate Alipore, is

hereby quashed, qua the petitioner herein namely Debal banerjee @Debdal Banerjee @ Debdulal Banerjee.

20. Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)