

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.10303 OF 2022

Between:

Jatin Kocher

... Petitioner

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & Another

... Respondents

Criminal Petition No.10312 OF 2022

Between:

Vikas Kawad

... Petitioner

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & Another
Respondents

...

DATE OF JUDGMENT PRONOUNCED: 24.11.2022
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 10303 of 2022

% Dated 24.11.2022

#Jatin Kocher

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Hyderabad & Another

... Respondents

! **Counsel for the Petitioners:** Sri. Nageshwar Rao Pujari

^ **Counsel for the Respondents:** Sri S.Sudershan,

Additional Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ (2015) 2 Ald (Crl.) 156

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos. 10303 & 10312 OF 2022****COMMON ORDER:**

1. Since Criminal Petition No.10303 of 2022 is filed by the petitioner/A6 and Criminal Petition No.10312 of 2022 is filed by A3 for quashing the proceedings in the same FIR No.939 of 2022 on the file of Banjara Hills, Police Station, registered for the offence under Sections 370, 370(A)(2) of IPC, Sections 3 to 5 of the Immoral Traffic (Prevention) Act, 1956, (for short 'the Act of 1956') they are being heard together and disposed off by way of this Common Order.

2. The case of the prosecution is that Banjara Hills Police conducted raid in Elan Spa, Road No.12, Banjara Hills on the basis of reliable information and on raiding the said premises, it was found that the organizers who are A1 and A2 were running prostitution business by engaging two female sex workers namely Chinneilhing, W/o.Nagamhao Haokip and Domnei D/o.Tonchon, who were found entertaining customers. According to the police, they were sex workers and under the garb of massage, they were doing prostitution.

3. The police arrested A1 and A2 for running prostitution in the name of Spa and remanded them to judicial custody on 14.11.2022. However, these petitioners, who are A3 and A6 were served with Section 41-A Cr.P.C notice.

4. Learned counsel appearing for the petitioners would submit that even according to the police, these petitioners are customers, as such, provisions under Sections 3 to 5 of the Act of 1956 are not attracted. Further, Section 370-A(2) of IPC is also not attracted.

5. On the other hand Sri S.Sudershan, learned Additional Public Prosecutor submits that in view of the judgment of this Court in S.Naveen Kumar @ Naveen v. State of Telangana¹ and also the judgment of this Court in Criminal Petition No.5803 of 2018, dated 27.06.2018, the offence under Section 370-A(2) of IPC is attracted. However, learned Additional Public Prosecutor fairly conceded that the provisions of Sections 3 to 5 of the Act of 1956 are not attracted as far as a customer is concerned.

¹ 2015 (2) ALD (Cri.) 156

6. In the cases cited by the learned Additional Public Prosecutor, the customers were found in a room along with sex workers. In the present case, five customers were found in the premises. Though there is a mention that the alleged sex workers were present in the premises along with customers, however, the names of these petitioners are not mentioned to have been found along with the said sex workers.

7. Section 370-A (2) of IPC is extracted hereunder:

“(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”

8. To attract an offence under Section 370-A(2), the said customer should have knowledge that a person has been trafficked and such person should have been sexually exploited in any manner. Only when both the ingredients are satisfied, person can be punished under Section 370-A (2) of IPC. Nowhere, either in the remand report or in the panchanama the names of these petitioners are mentioned as the persons in the rooms along with the sex workers.

9. In the said circumstances, when the facts of the cases cited by the learned Additional Public Prosecutor differ on facts, wherein the customers were found along with sex workers and in the present case, they were found in the premises and there being no mention of these petitioners being present in the room along with sex workers, the provision under Section 370-A(2) of IPC is not attracted.

10. In the said circumstances, the proceedings against these petitioners in FIR No.939 of 2022 of PS Banjara Hills on the file of III Additional Chief Metropolitan Magistrate at Nampally, are hereby quashed.

11. Accordingly, these Criminal Petitions are allowed.

K.SURENDER, J

Date: 24.11.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITIOIN Nos.10303 and 10312 OF 2022

Date: 24.11.2022.

kvs

