

Telangana High Court

Nadimpalli Sai, Mahabubnagar ... vs State Of Telangana, Rep Pp., on 3 February, 2023

Bench: G.Radha Rani

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No. 116 of 2015

ORDER:

This Criminal Revision Case is filed by the petitioner/accused aggrieved by the judgment dated 15.07.2014 passed in Criminal Appeal No.483 of 2013 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad confirming the order dated 14.05.2013 passed in C.C.No.20 of 2013 on the file of the Court of the Special Judicial First Class Magistrate for Excise Cases, Hyderabad.

2. The case of the prosecution in brief was that on 20.01.2013 at 9:30 PM, Detective Inspector of Police, S.R.Nagar Police received credible information about one Sai, accused No.1 was running a brothel house at H.No.A-68, Vengal Rao Nagar, Hyderabad. Believing the said information, he informed the same to his superior officer and obtained search warrant from the Assistant Commissioner of Police, Panjagutta Division, secured the presence of panch witnesses, T. Suresh and Mahaboob Pasha and drafted search proceedings. The Detective Inspector along with his staff, two police constables and a women constable proceeded to the said premises.

Dr.GRR,J CrI.R.C.No.116 of 2015 He asked one of the police constables to act as a decoy witness and sent him to the brothel house with instructions to give signal. After getting signal from him, the Detective Inspector along with other staff members and panch witnesses entered into the said premises and found accused Nos. 1 and 2 and served search proceedings on accused No.1. On checking bed rooms, he found accused No.3 customer along with a sex worker in one room and another sex worker also in the said house. He took accused Nos.1 to 3 into custody and recorded their confession statements and seized one Samsung cell phone, cash of Rs.4,000/- and two condoms from the possession of accused No.1, who was organizing the brothel and seized one Nokia cell phone, cash of Rs.4,000/- and condoms from the possession of accused No.2 and also seized one Nokia cellphone and cash of Rs.1,000/- from the possession of customer - accused No.3 under the cover of confession cum seizure panchanama in the presence of panch witnesses. He produced accused Nos.1 to 3 and victim sex workers before the Inspector of Police and lodged a report. Basing on the said report, the Inspector S. Prabhakar registered a case in Crime No.45 of 2013 under Sections 3, 4, 5(1)(d) and 7(1) of Immoral Traffic (Prevention) Act, 1956 (for short, 'the Act'). He Dr.GRR,J CrI.R.C.No.116 of 2015 recorded the statements of Detective Inspector and the staff who accompanied him, the statements of the victim sex workers, the statement of house owner, effected the arrest of accused Nos. 1 to 3 and produced them before the Court. He sent the victims to Rescue Home for their rehabilitation and after completion of investigation filed charge sheet against the accused.

3. The case was tried by the Special Judicial First Class Magistrate for Excise Cases, Hyderabad. Charges were framed against the accused Nos.1 and 2 for the offences under Section 3,4,5(1)(d) of the Act and under Section 7(1) of the Act against the accused No.3.

4. During the course of the trial, the prosecution examined PWs.1 to 7 and got marked Exs.P1 to P7 and M.Os.1 to 8 on its behalf. The accused failed to adduce any oral or documentary evidence.

5. On considering the evidence of the witnesses, the trial court found the accused guilty for the offences for which they were charged and convicted accused Nos.1 and 2 to undergo simple imprisonment Dr.GRR,J CrI.R.C.No.116 of 2015 for a period of two years each and to pay a fine of Rs.2,000/-, in default of payment of fine, each of them to undergo simple imprisonment for (02) months for the offence under Section 3(2)(a) of the Act. Simple imprisonment for a period of (06) months each for the offence under Section 4 of the Act and sentenced to undergo rigorous imprisonment for a period of (03) years and to pay a fine of Rs.1,000/- by each accused, in default of payment of fine, each of them to undergo simple imprisonment for (02) months for the offence under Section 5 of the Act and directed all the sentences to run concurrently. Accused No.3 was also convicted and sentenced to undergo simple imprisonment for (03) months for the offence under Section 7 of the Act.

6. Aggrieved by the said judgment of conviction and sentence recorded against him, accused No.1 preferred an appeal. The appeal was heard by the IV Additional Metropolitan Sessions Judge, Hyderabad. Vide Criminal Appeal No.483 of 2013 dated 15.07.2014, the lower appellant court dismissed the appeal confirming the conviction and sentence recorded against accused No.1 in C.C.No.20 of 2013.

7. Aggrieved further, accused No.1 preferred this revision Dr.GRR,J CrI.R.C.No.116 of 2015 contending that the courts below failed to see that the ingredients to constitute the offences under Sections 3, 4, 5(1)(d) of the Act were not made out. The courts below failed to see that PW4, the owner of the premises did not support the prosecution case and was declared as hostile. The courts below failed to see that the prosecution failed to prove that accused No.1 took the house of PW4 on lease for running brothel house. The courts below failed to see that in order to constitute prostitution, proof of passing of consideration in money or kind from male to female accused was necessary, which was not proved in the present case. No independent witnesses were examined at the scene of offence. The courts below ought to have rejected the evidences of PWs.5 and 7 with regard to arrest and recovery. The courts below erred in convicting the accused, basing on the evidence of PWs.1 and 2 who were wholly unbelievable witnesses, who were not even in a position to name the accused and prayed to allow the revision by setting aside the judgment of the courts below.

8. Learned counsel for the revision petitioner failed to argue the matter inspite of taking several adjournments. Hence this Court proceeded to decide the matter on merits.

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9. The object of the provision of revision is to set right a patent defect or an error of jurisdiction or law. It has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. The revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is

based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. The revisional jurisdiction is limited and cannot be exercised in a routine manner as per the judgment of the Hon'ble Apex Court in Amit Kapoor vs Ramesh Chander & Anr.1.

10. On a perusal of the orders of the courts below, the trial court considered the provisions of Sections 3(2)(a), 4 and 5 of the Act and on considering the evidence on record that PWs.1 and 2, who were the victim sex workers stated that they belonged to Kolkata and Tamil Nadu respectively and PW.1 stated that her husband was addicted to vices and was not doing any work, she was having one female child (2012) 9 SCC 406.

Dr.GRR,J CrI.R.C.No.116 of 2015 and to support that child, she left her husband. One Sania brought her to Hyderabad from Kolkata to do house-hold work and took her to accused No.1's house and accused No.1 offered her to do prostitution, she accepted the proposal of accused No.1 and worked as sex worker in his house. She stated that she found PW2, the other sex worker also in the said house. She stated that she participated in sexual activities with customers, accused No.3 was a customer and accused No.2 used to collect money from the customers, while she was in the said house, police raided on that house.

11. PW2 stated that her husband deserted her and she was having two sons, accused No.1 brought her from Mumbai to Hyderabad, while she was working as a tailor in Mumbai, to do immoral activities and took her to his flat and in the said flat she worked as a sex worker, accused No.1 offered attractive amount to her and sent customers to her.

12. PW3 is the Detective Inspector, PW.6 is the decoy police constable, PW.5 is the panch witness, who accompanied the police and stated about the raid conducted by the police on the flat and finding accused Nos.1 to 3 and victims sex workers at the said place Dr.GRR,J CrI.R.C.No.116 of 2015 and that police seized cash of Rs.9,000/- and 2 cell phones under the cover of panchanama. Thus all these witnesses supported the case of the prosecution.

13. PWs.1 and 2 clearly stated about the role played by accused No.1 in procuring them for the sake of prostitution and sending customers to them and living on the said earnings and that he was incharge of the flat. Their evidence would prove all the ingredients of the offences under Sections 3, 4 and 5 of the Act against accused No.1.

14. PW.4 is the owner of the house bearing No.A-68, Vengalrao nagar, Hyderabad. He stated that he owned the said house and gave it on lease to one Mr. Kiran and police raided the said house since inmates were using it as brothel. He had not stated that he gave the said house to accused No.1 on lease but that he gave it on rent to one Mr. Kiran. The evidences of other witnesses, the sex workers, official witnesses as well as the panch witnesses would prove the presence of accused No.1 and the role played by him in the said premises.

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15. The lower appellate court observed that as per Section 3 of the Act, anyone who was in occupation of the premises and who was not a owner or tenant was also still liable, if he was using the premises for the purpose of sexual exploitation for commercial purposes which would amount to using the premises as a brothel and the failure of PW.4 to speak about anything else would not assist the accused in any manner. This Court does not find any perversity in the said finding of the courts below.

16. The trial court also considered the evidence of PW.7 investigating officer who categorically stated about the involvement of accused No.1 in Crime No.436 of 2012 under Sections 3, 4, 5(1)(d) and 7(1) of the Act in Kukatpally Police Station, Crime No.952 of 2012 under Sections 3, 4, 5(1)(d) and 7(1) of the Act of Panjagutta Police Station and that he also trespassed into Ujwala Rehabilitation home at Ramanthapur and took away the victim women, who were kept in the said home for rehabilitation, for which a case in Crime No.374 of 2012 was registered against him at Uppal Police Station under Sections 448, 342, 506 of IPC and again the accused No.1 along with his associate kidnapped the victim women from Ujwala Dr.GRR,J CrI.R.C.No.116 of 2015 Rehabilitation home, for which another case was registered against him in Crime No.534 of 2012 under Sections 363, 448 and 342 of IPC at Cyberabad Police Station.

14. The trial court observed that there was ample evidence against the accused No.1 as he was procuring female persons from various places like Bombay and also from Tamil Nadu and securing the customers and was living on the earnings of prostitution by engaging the female sex workers.

15. The lower appellate court also observed that the accused persons failed to explain as to why they were in possession of condoms and failed to account the source of income for the money seized from them and the evidence of PW1 indicated that the money came from customers to the accused as consideration for using the bodies of PWs.1 and 2 for sex and that the accused failed to explain his presence on the date at that house, if he was not connected with the said house or the sex workers and considered that the guilt of the accused was established beyond reasonable doubt.

16. Thus both the courts below have assessed the evidence of the Dr.GRR,J CrI.R.C.No.116 of 2015 prosecution witnesses in detail and came to the conclusion about the guilt of the accused. Hence, this Court does not consider that the judgments of the courts below were perverse or the result of an abuse of any process or the same were erroneous. The sentence inflicted against the accused No.1 also appeared to be commensurate with the complicity of the charges framed against him. Hence, this Court does not find any necessity to interfere with the judgements of the courts below.

17. In the result, the Criminal Revision Case is dismissed confirming the judgments of the courts below in convicting and sentencing the accused for the offences under Sections 3(2)(a), 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 as stated above. The revision petitioner/appellant is directed to be taken into custody immediately by the Court below and to implement the sentence accordingly.

Miscellaneous petitions pending, if any, shall stand closed.

----- Dr. G. RADHA RANI, J February 03, 2023 SS Dr.GRR,J  
Crl.R.C.No.116 of 2015 THE HON'BLE Dr. JUSTICE G. RADHA RANI CRIMINAL REVISION CASE  
No.116 of 2015 February 03, 2023 SS