



2026:KER:14343

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 17TH DAY OF FEBRUARY 2026 / 28TH MAGHA, 1947

CRL.MC NO. 9565 OF 2025

CRIME NO.416/2025 OF Kadavanthra Police Station, Ernakulam

FIR NO.416 OF 2025 OF JUDICIAL FIRST CLASS MAGISTRATE - VIII,
ERNAKULAM

PETITIONER/ACCUSED

BY ADVS.
SHRI.BABY THOMAS
SHRI.K.K.MOHANDAS
SMT.MARIAMMA JOSEPH
SHRI.BIJU GEORGE
SRI.INDRAJITH S KAIMAL
SHRI.ALBERTHOVE FRANCIS.M.G.
SMT.EHLAS HALEEMA C.K.
SMT.ALICIA JOSE
SHRI.JOHNY GEORGE

RESPONDENTS/STATE/COMPLAINANT

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER
KADAVANTHRA POLICE STATION, ERNAKULAM DISTRICT, PIN -
682020

PP. SMT. ANIMA.M

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
4.2.2026, THE COURT ON 17.02.2026 PASSED THE FOLLOWING:



ORDER

Dated : 17th February, 2026

The 4th accused in crime No.416/2025 of Kadavanthra police station filed this petition under Section 528 of B.N.S.S, praying for quashing all further proceedings against him. The offences alleged in the FIR are under Sections 3(1), 3(2)(a) of the Immoral Traffic (Prevention) Act, 1956 (for short, the Act).

2. As per the prosecution case, the accused persons 1 and 2 with the intention to make earnings by running a brothel, took on rent a two-storied building at Gandhi Nagar and have been conducting a brothel therein. The 3rd accused came there after paying consideration online and used the service of one of the ladies kept there for his sexual needs and thereby they are alleged to have committed the aforesaid offence. Accused No.3 referred to in the FIR is the petitioner herein, who is now arrayed as accused No.4.

3. According to the learned counsel for the petitioner, as per the allegations in the FIR, the petitioner is only a customer and as such, the offences in the FIR will not lie against him. Therefore, he prayed for quashing all further proceedings against the petitioner.

4. The petition was strongly opposed by the learned Public Prosecutor. According to her, subsequently Sections 5(1)(a), 5(1)(d) and 7(1)



(b) of the Act and Section 143(1)(f), 144(2) r/w 34 BNS were also revealed and therefore, she prayed for dismissing the petition.

5. Section 3 of the Act deals with punishment for keeping a brothel or allowing premises to be used as a brothel and as such, the above provision does not apply to the petitioner.

6. The learned Public Prosecutor, relying upon the decision of this Court in **Sarath Chandran v. State of Kerala**, 2025 (6) KHC 25, would argue that in this case Section 5 is attracted.

7. Section 5 of the Act reads as follows :-

“5. Procuring, inducing or taking woman or girl for the sake of prostitution.

(1) Any person who-

(a) procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution; or

(b) induces a woman or girl to go from any place, with the intent that she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a woman or girl, or causes a woman or girl to be taken, from one place to another with a view to her carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a woman or girl 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 1 [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. Therefore in order to attract the offence under Section 5(1)(a) of the Act, a person should procure, induce or take persons for the purpose of prostitution. In order to attract the offence under Section 5(1)(d) of the Act, a person should cause or induce a woman or girl to carry on prostitution.

9. In the decision in **Maniraj v. State of Kerala, 2019 (3) KHC 183**, also this Court held that Section 5 of the Act would be attracted only if the prosecution has a case that the accused induced a person to go from any place with intent that he may, for the purpose of prosecution, become the



inmate of, or frequent a brothel. In the instant case, there is no such allegation against the petitioner and as such, the offence under Section 5 of the Act is also not made out against the petitioner.

10. In the decision in **Abhijith v. State of Kerala, 2023 KHC 9425**, in a similar instance this Court held that a customer cannot be held liable under Section 5 of the above Act. In the decision in **Abdul Hameed P. v. State of Kerala and Another** (Crl.M.C.8277/2024) also, after referring to another decision in *Radhakrishnan v. State of Kerala, 2008 (2) KLT 521*, this Court held that a customer in a brothel cannot be punished under Sections 3 and 4 of the Act.

11. In the instant case, even as per the prosecution case, the women were kept in the brothel by the accused persons 1 and 2 and they were not brought by the petitioner. The prosecution also has no case that the petitioner caused or induced the women to carry on prostitution. Therefore, the allegations raised against the petitioner do not constitute the offence punishable under Section 5 of the Act.

12. In order to attract the offence under Section 7 of the Act, prostitution is to be carried out in the vicinity of a public place. Section 7 of the Act reads as follows :-

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.

(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 or 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 prostitution for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessor or landlord, of any premises referred to in sub-section (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 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.]

13. The prosecution has no case that the alleged place of incident is a notified area. It is contended that there is a Cross Chappel (കുരിശുപള്ളി) within a distance of 50 metres from the place of occurrence. It is not a place where there are any ceremonies like holy mass or service so as to be called as a public religious worship. Therefore, in the facts of this case the offence under Section 7 of the Act is also not attracted. In the above circumstances, no useful purpose will be served in continuing the proceedings against the petitioner and as such, all further proceedings against the petitioner is liable to be quashed.

In the result, this Crl.M.C is allowed. All further proceedings against the petitioner in crime No.416/2025 of Kadavanthra police station stands quashed.

Sd/-

C.Pratheep Kumar, Judge



APPENDIX OF CRL.MC NO. 9565 OF 2025

PETITIONER ANNEXURES

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| Annexure 1 | A TRUE COPY OF THE FIR NO. 0416/2025 OF KADAVANTHRA POLICE STATION DATED 15.07.2025 IS PRODUCED AND MARKED AS ANNEXURE A1. |
| Annexure 2 | THE REMAND REPORT IN CRIME NO.416/2025 OF KADAVATHRA POLICE STATION DATED 15.07.2025 AND MARKS THE REMAND REPORT AS ANNEXURE A2. |