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'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 21ST DAY OF JULY 2025 / 30TH ASHADHA, 1947

CRL.MC NO. 8198 OF 2022

CRIME NO.331/2021 OF PEROORKADA POLICE STATION,
THIRUVANANTHAPURAM

PETITIONER:

XX

BY ADV SHRI.C.S.SUMESH

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031

OTHER PRESENT:

SMT. PUSHPALATHA. M.K, SR.PP.

THIS CRIMINAL MISC.CASE HAVING BEING FINALLY HEARD ON
02.04.2025, THE COURT ON 21.07.2025 PASSED THE FOLLOWING:



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"CR"

V.G.ARUN, J

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Crl.M.C.No.8198 of 2022

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Dated this the 21st day of July, 2025

ORDER

Petitioner is the 3rd accused in Crime No.331 of 2021 registered at the Peroorkada Police Station for the offences under Sections 3, 4, 5(1)(d) and 7 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'the Act'). The crime was registered on the allegation that on 18.03.2021, based on reliable information that prostitution was going on in house bearing No.TC-21/755 in Kudappanakkunnu, the Inspector of Police along with his subordinate officers conducted search in that building and found the petitioner and a woman lying naked on a bed in one of the rooms. Another man and a lady was found in one of the other rooms and on questioning the women trying to hide inside the kitchen, it



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came to light that accused Nos.1 and 2 had procured three women and were inviting interested persons for the purpose of prostitution. The keeper of the brothel stated that Rs.2000/- per hour was collected from the persons desirous of indulging in physical relationship with the three women and out of the said amount, Rs.1000/- will be paid to the ladies.

2. Learned counsel for the petitioner contended that even if the allegations are accepted in their entirety, the alleged offences are not attracted against the petitioner. It is pointed out that Section 3 of the Act pertains to punishment for keeping a brothel, while Section 4 is applicable only to persons living on the earnings of prostitution. For Section 7 to be applicable, the alleged act of prostitution should have been carried out in a notified area. That leaves only Section 5(1)(d), which has no application since the petitioner was only a customer in the brothel and cannot therefore be proceeded against on the premise that he had caused or induced the sex worker to carry on prostitution.



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3. According to the counsel, it is the prostitute (sex worker) who canvasses or projects himself either directly or through brothel manager, tout or pimp for selling or rendering sexual services to others (customers). That being so, the sex worker carries on the business of prostitution with the aid of his/her associates like brothel manager, tout or pimp. Moreover, a customer in a brothel house does not sell goods or services and therefore the expression "carry on trade or business" has no application. On the contrary, the customer is only availing the services rendered by the sex worker. Therefore, the customer is having no nexus or role in the carrying of the business of prostitution by a sex worker and his/her associates. In support of the arguments, reliance is placed on the decisions of this Court in **Radhakrishnan K. v. State of Kerala** [2008 (2) KHC 460], **Antony Vincent v. State of Kerala** [2014 (3) KHC 542] and **Vijayakumar and Others v. State of Kerala and Others** [2016 (1) KHC 698]. Reference is also made to the decisions of the High Courts of



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Allahabad, Gujarat and Andhra Pradesh reported in **Dinesh Tiwari v. State of U.P. And Others** [MANU/UP/0405/2024], **Jojo Thomas Kannappilly v. State of Gujarat** [MANU/GJ/1960/2023] and **Arjun Rao and Others v. the State of A.P.** [MANU/AP/0543/2013]. According to the learned counsel, the contrary view expressed by this Court in **Abhijith v. State of Kerala** [2023 KHC 9425] and **Mathew v. State of Kerala** [2022 (7) KHC 515] do not lay down the correct law.

4. The learned Public Prosecutor contended that the question whether the offences under Section 5(1)(d) and 7 of the Act are attracted has to be decided based on the evidence tendered before the trial court.

5. As contended by the counsel for the petitioner, only a person keeping or managing, or acting or assisting in the management of a brothel can be prosecuted and punished for the offence under Section 3. Likewise, Section 4 is attracted only against a person living on the earnings of prostitution of another person. Though the offence under Section 7 is



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attracted against the person carrying on prostitution and the person with whom such prostitution is carried on, the objectionable activity should be within the area or the distance mentioned in clauses (a) and (b) of sub-section (1) of Section 7. The question whether the brothel is situated in a notified area or within the prohibited distance has to be decided based on the evidence. The legal position that a customer in a brothel situated in a notified area would fall within the purview of Section 7 and offence will lie against him/her is no longer *res integra* in view of the erudite exposition in **Mathew** (supra), extracted below;

"14. The meaning to be ascribed to the words the "person with whom such prostitution is carried on" is significant for this case. Those words will have to be read in conjunction with the definition of the word prostitution. The term prostitution is defined as sexual exploitation or abuse of persons for commercial purposes. Sexual exploitation cannot be done singularly. The person engaged in the act of exploitation is also a person who falls within the term 'persons with whom such prostitution is carried on'. In other words, the person who exploits or abuses the prostitute is the person with whom the prostitute carries on prostitution. Thus the act of immoral



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traffic cannot be perpetrated or carried on without a 'customer'. By using the words 'person with whom the prostitution is carried on' in S.7(1) of the Act, I am of the considered view that the legislature has intended the customer also to be brought within the purview of the penal provisions."

6. That leaves only the challenge against the prosecution for the offence under Section 5(1)(d) of the Act. While considering the challenge, one should bear in mind the object of the Act. The Suppression of Immoral Traffic in Women and Girls Act, 1956, the precursor to the present Act, was enacted pursuant to an International Convention held at New York on 9th May, 1950, to which India was also a signatory. The principal object of the Act is to prevent the commercialization of the vice and trafficking among women and girls. The Act was amended in 1978 to rectify certain inadequacies in its implementation. Despite the amendment, enforcement of the Act was not effective enough to deal with the problems of immoral traffic in all its dimensions. Suggestions were therefore made to the Government by voluntary organisations



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working for women, advocacy groups and various individuals for enlarging the scope of the Act to make the penal provisions more stringent and to provide minimum standards for correctional treatment and rehabilitation of the victims. Based on the suggestions and with intent to widen the scope of the Act to cover all persons, whether male or female, who are exploited sexually for commercial purposes, the Act was again amended in 1986 and renamed as the Immoral Traffic (Prevention) Act.

7. Before proceeding further, it will also be apposite to understand the meaning of the following expressions, as defined in Section 2 of the Act;

“(a) “brothel” includes any house, room, conveyance, or place or any portion of any house, room, conveyance, or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes;

xxx xxx xxx xxx xxx

(f) “prostitution” means the sexual exploitation or abuse of persons for commercial purposes and the expression “prostitute” shall be construed accordingly;”



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8. Going by the definitions, any place to which a person goes and freely asks for sex workers, selects a person and engages in sexual intercourse with the person so chosen, is a brothel. The act of that sex worker, in having sex with the other person for commercial purposes is prostitution. What remains to be considered is whether availing sexual services at a brothel will attract the offence under Section 5(1)(d) of the Act, extracted below for easy reference;

“5. Procuring, inducing or taking a person for the sake of prostitution.—(1) Any person who—

xxx xxxx xxx

(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



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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;”

9. This court in **Abhijith** (supra) has held that the person who gets or obtains domain over another for the purpose of prostitution can be said to have procured that person for the purpose of prostitution. The contextually relevant paragraph of that judgment reads as under;

“9. The word 'procure' is not defined in the ITP Act. Therefore, the word has to be understood in the context in which it is used and bearing in mind the object, the statute intends to achieve. The principal object of the Statute mentioned in the Statement of Objects and Reasons is to prevent commercialisation of the vices and trafficking among women and girls. The meaning of 'procure' given in Merriam Webster Dictionary is to get possession of; or to obtain something. If the said meaning of the word 'procure' is understood in the context of the aforesaid objective of the Statute, the person, who gets or obtains domain over a person for the



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purpose of prostitution, has to be said to procure a person for the purpose of prostitution. In that view of the matter, a consumer also comes within the purview of S.5 of the ITP Act. Hence, the contention of the petitioner that even an offence under S.5 of the ITP Act does not lie against the petitioner is untenable. The impugned order is therefore not liable to be set aside altogether.”

10.The diametrically opposite view taken by the other High Courts is that a customer in a brothel cannot be penalised under Sections 5 or 7 of the Act. I respectfully disagree with the reasoning in those decisions. In my view, a person utilising the service of a sex worker at a brothel cannot be termed a customer. To be a customer a person should buy some goods or services. A sex worker cannot be denigrated as a product. In most cases, they are lured into the trade through human trafficking and compelled to offer his/her body to satisfy the carnal pleasure of others. Indeed, the pleasure seeker may be paying money, a large chunk of which goes to the keeper of the brothel. The payment therefore can only be perceived as an inducement to make the sex worker offer his/ her body and act in accordance with the demands of the payer. Thus, a person



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availing the services of a sex worker in a brothel is actually inducing that sex worker to carry on prostitution by paying money and is therefore liable to be prosecuted for the offence under Section 5(1)(d) of the Act. In that view of the matter, if the inducer is termed as a customer that would be contrary to the object of the Act, which is intended to prevent human trafficking and not punish the persons compelled to indulge in prostitution. Here, it is pertinent to note that only Section 7 of the Act is intended to punish the sex worker, that too only when prostitution is carried on in a prohibited area.

In the result, the Crl.M.C is allowed in part by quashing the further proceedings against the petitioner for the offences under Sections 3 and 4 and permitting to continue the prosecution for the offences under Sections 5(1)(d) and 7 of the Act.

sd/-

V.G.ARUN, JUDGE



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APPENDIX OF CRL.MC 8198/2022

PETITIONER ANNEXURES

Annexure 1

CERTIFIED COPY OF THE F.I.R. IN CRIME
NO.331/2021 OF PEROORKADA POLICE
STATION, THIRUVANANTHAPURAM DATED
18.3.2021