

Surabhi Ganne Shekar vs The State Of Telangana on 17 February, 2025

Author: Juvvadi Sridevi

Bench: Juvvadi Sridevi

THE HONOURABLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL PETITION No.1997 of 2025

O R D E R:

This Criminal Petition is filed by the petitioner-accused No.2 to quash the proceedings against him in Crime/FIR No.1230 of 2024 on the file of the Station House Officer, Jagadgirigutta Police Station, Cyberabad. The offences alleged against petitioner are under Sections 143, 144(2) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') (Sections 370, 370(A) of the Indian Penal Code) and Sections 3, 4, 5, 6 of the Immoral Traffic (Prevention) Act, 1956 (for short 'the Act').

02. Heard Sri Ramesh Kadari, learned counsel for petitioner and Sri Jithender Rao Veeramalla, learned Additional Public Prosecutor for the State.

03. In brief, the case of the prosecution is that the Police, received credible information about running of brothel house and raided the premises at H.No.4-32-403, A/7, 2nd floor, Allwyn Colony, Phase-I, Jagadgirigutta and found that accused No.1 was organizing brothel house and petitioner-accused No.2 is the customer of the said brothel house.

04. Learned counsel for petitioner submitted that the woman who was found with petitioner is not a trafficked woman and petitioner is nothing to do with the alleged offences. The ingredients of the offence under Sections 143, 144(2) of BNS and Sections 3, 4, 5, 6 of the Act does not attract to the present case on hand. Thereby, he prayed to quash the criminal proceedings against the petitioner.

05. Learned Additional Public Prosecutor for the State submitted that there are specific allegations against petitioner and the truth or otherwise would come out only after conducting full- fledged trial by the concerned Court below and prayed to dismiss this Criminal Petition.

06. In view of the above facts and circumstances of the case, it is relevant to extract the provision under Section 143 of BNS:

"143. Trafficking of a Person: (1)Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-

Firstly-- using threats, or Secondly-- using force, or any other form of coercion, or Thirdly-- by abduction, or Fourthly-- by practising fraud, or deception, or Fifthly-- by abuse of power, or Sixthly-- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. Explanation 1-- The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. Explanation 2-- The consent of the victim is immaterial in determination of the offence of trafficking. (2)Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine. (3)Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4)Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5)Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine. (6)If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. (7)When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

07. Section 144 of BNS reads as under:

Exploitation of a trafficked person:

(1)Whoever, knowingly or having reason to believe that a child has been trafficked, engages such child for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(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.

08. As per Sections 143 and 144 of BNS, any person by using threat or force or any form of coercion or abduction by practicing fraud or deception or by abusing of power or by inducing can only be termed as a 'trafficked person'. In the present case, even according to the contents of FIR, victim stated that she was doing prostitution for the sake of money.

09. Now coming to Sections 3, 4, 5, 6 of the Act, the provisions in detail are extracted below:

3. Punishment for keeping a brothel or allowing premises to be used as a brothel.

(1)Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2)Any person who-

(a)being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b)being the owner, lessor or landlord of any premises 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 is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel. Shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine. (3)Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

4. Punishment for living on the earnings of prostitution.

(1)Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(2)Where any person is proved-

(a)to be living with, or to be habitually in the company of, a prostitute; or

(b)to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c)to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1):Provided that no such presumption shall be drawn in the case of a son or daughter of a prostitute, if the son or daughter is below the age of eighteen years.

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 first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees. (2)In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(3)An offence under this section shall be triable-

(a)in the place from which a woman or girl is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such woman or girl is made; or

(b)in the place to which she may have gone as a result of the inducement or to which she is taken or caused to be taken or an attempt to take her is made.

6. Detaining a woman or girl in premises where prostitution is carried on.

(1) Any person who detains any woman or girl, whether with or without her consent,-

(a) in any brothel, or

(b) in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees. (2) On a second or subsequent conviction for an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees. (3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual inter-course with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,-

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

10. The Sections 3, 4, 5, 6 of the Act deals with regard to punishment for keeping a brothel or allowing premises to be used as a brothel, punishment for living on the earnings of prostitution; punishment for procuring, inducing or taking woman or girl for the sake of prostitution; punishment for detaining a woman or girl in premises where prostitution is carried on. There are no allegations against the petitioner that he is running brothel, or he is living on the earnings of prostitution, or he procured girl for doing prostitution, or he detained the victim in the premises where prostitution is carried on. In the present case on hand, as per the case of prosecution, the sole allegation against petitioner- accused No.2 is that he is a customer. Therefore, the allegation against the petitioner does not constitute the offences under Sections 3, 4, 5, 6 of the Act.

11. As seen from the entire case record, including the contents of FIR, the victim disclosed that the petitioner is a customer and she clearly stated that she joined brothel house and given her willingness to do sex with the customers for the sake of money. Furthermore, there is no allegation

in the FIR that the petitioner herein had knowledge and/or the reason to believe that the woman was trafficked for the purpose of prostitution. Therefore, the ingredients required to constitute the offences under Sections 143, 144(2) of IPC is not made out against the petitioner.

12. In view of the above discussion and having considered the fact that the petitioner-accused had no knowledge that the woman was trafficked for the purpose of prostitution, this Court is of the considered view that the continuation of the proceedings against petitioner-accused No.2 amounts to abuse of process of law, therefore, the proceedings against the petitioner- accused No.2 are liable to be quashed.

13. Accordingly, this Criminal Petition is allowed and the proceedings against the petitioner-accused No.2 in Crime/FIR No.1230 of 2024 on the file of the Station House Officer, Jagadgirigutta Police Station, Cyberabad, are hereby quashed.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

_____ JUVVADI SRIDEVI, J Date: 17-FEB-2025 KHRM