

Court No. - 76

Case :- APPLICATION U/S 528 BNSS No. - 8170 of 2025

Applicant :- Vipul Kohli

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Raunak Tiwari, Sr. Advocate, Vivek Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Anoop Trivedi, learned Senior Counsel assisted by Shri Raunak Tiwari, learned counsel for the applicant, learned A.G.A. for the State-respondent, and perused the record.
2. The instant application has been preferred with the prayer to quash the summoning/cognizance order dated 05.10.2024 passed by Additional Civil Judge (S.D.)-2/Additional Chief Judicial Magistrate, District-Gautam Buddh Nagar as well as entire proceedings of Criminal Case No. 10149 of 2024 titled State of U.P. v. Vipul Kohli and Others, arising out of Case Crime No. 206 of 2024, under Section 370 of I.P.C. and Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956, registered at Police Station Noida, Sector 49 District Commissionerate Gautam Buddha Nagar.
3. The prosecution's case is that, acting on secret information, on 20.05.2024, Inspector In-charge, P.S. A.H.T., Noida raided Allora Thai Spa Centre and found individuals engaged in prostitution. Women were allegedly enticed into prostitution, and the applicant was found in a compromising position with a female inside the spa. The police seized aphrodisiac substances, and based on these allegations, the impugned FIR was registered against the spa's

owner and the applicant-the customer. Subsequently, a charge sheet was filed, and the Magistrate took cognizance of the offence under Section 370 of I.P.C. and Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956 and the applicant aggrieved by the cognizance order, has approached this court seeking the quashing of the proceedings.

4. The applicant's counsel primarily argues that the applicant was neither the owner of the spa nor involved in enticing women into prostitution. At most, the applicant was a consumer who had paid for services and was found engaged in consensual intimacy with one of the women at the spa. He submits that no specific allegations against the applicant attract the ingredients of Section 370 of I.P.C. and Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956.

5. Section 5 of the Immoral Traffic (Prevention) Act, is reproduced below:

"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, 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 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 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. The applicant's counsel relies on the judgment dated 22.02.2024, passed by a coordinate Bench of this Court in Application u/s 482 No. 9161 of 2023, to argue that the applicant's case does not fall within the definitions under the Act, nor do the ingredients of Section 5 attracts to the role assigned to the applicant. He argues that the coordinate Bench of this Court and various High Courts have consistently ruled that the definitions of "prostitution" and the ingredients of Section 5 of the Immoral Traffic (Prevention) Act, 1956, as well as Section 8, do not apply to customers.

7. *Per contra*, the learned A.G.A. opposes these arguments, stating that the applicant was found at the place of incident, arrested on the spot, and was found engaged in an intimate act with one of the women and based on her statement, the applicant was implicated in the FIR.

8. After considering the arguments of both parties, the record, and particularly the judgment cited by the applicant's counsel, along with the consistent rulings of other High Courts, it is observed that even if the applicant's alleged involvement are taken as true, the ingredients of Section 370 of I.P.C. read with Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956 Act are not attracted qua applicant. It's prosecution's case that the applicant was found involved consensually with one of the women at the spa, having paid for the services. Therefore, the proceedings against the applicant are unsustainable in law. Moreover, the lady with whom the applicant has been alleged to have found involved is neither the complainant nor a police witness, therefore, the chances of conviction are also bleak.

9. Based on aforesaid deliberations, the summoning/cognizance order dated 05.10.2024 passed by Additional Civil Judge (S.D.)-2/Additional Chief Judicial Magistrate, District-Gautam Buddh Nagar as well as entire proceedings of Criminal Case No. 10149 of 2024 titled State of U.P. v. Vipul Kohli and Others, arising out of Case Crime No. 206 of 2024, under Section 370 of I.P.C. and Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956, registered at Police Station Noida, Sector 49 District Commissionerate Gautam Buddha Nagar, are hereby quashed.

10. Accordingly, the instant application is **allowed**.

Order Date :- 12.3.2025

Shafique

Justice Vinod Diwakar