

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I,
KAYAMKULAM**

Present:- Smt. Aiswaryarani, Judicial First Class Magistrate
Dated this the 18th day of April, 2026.

CC No. 1140/2021

- Complainant : State represented by Sub Inspector of Police, Kayamkulam, Police Station in Crime No. 2532/2017 (By APP Sr. Grade, Kayamkulam)
- Accused : A1 Unnuni, Aged 54/17, S/o. Thankachan, Valu Thunduparambil Veedu, Thekkekara, Mavelikara.
A2 Abhi, Aged 43/17, S/o. Purushan, Abhi Bhavanam, Narakathara, Kumarapuram Village, Haripad.
A3 Shibumon, Aged 31/17, S/o. Thomas, Jessy Bhavanam, Mannaletu Pacha Muri, Pazhaya Kunnumel, Kilimanoor.
A4 Manju, Aged 40/17, S/o. Kochupappan, Puthuparambil Veedu, Kottoor, Kaviyoor, Thiruvalla.
A5 Viji, Aged 29/17, D/o. Omana, Bindhu Bhavanam, Kalathimel, Pattoor, Nooranadu.
A6. Rajendran, Aged 58/17, S/o. Naraynan, Narayanapuram Veedu, Muthukulam Vadakku Muri, Muthukulam Village.
(By Adv. S Sajeev for A1, A2, A3 and A4 Adv. P S Zameer for A5, and Adv. P Biju for A6)
- Offences : U/ss. 3, 4, 5(a), 7(1)(b) and 7(2)(b) of the Immoral Traffic Prevention Act, 1956.

Plea : Not guilty.

Finding : Not guilty.

Sentence or Order : Accused are found not guilty of the offences punishable u/ss. 3, 4, 5(a), 7(1)(b) and 7(2)(b) of the Immoral Traffic Prevention Act, 1956. and they are acquitted of the said charges as provided u/s 248(1) Cr.P.C.

DESCRIPTION OF ACCUSED							
SL No	Name of Police Station	Name of accused	Father's name	Religion	Occupation	Residence	Age
1	Kayamkulam	Unnunni	Thanckachan			Mavelikara	54
2	Kayamkulam	Abhi	Purushan			Haripad	43
3	Kayamkulam	Shijumon	Thomas			Kilimanoor	31
4	Kayamkulam	Manju	Kpchupappan			Thiruvalla	40
5	Kayamkulam	Viji	Omana			Nooranadu	29
6	Kayamkulam	Rajendran	Narayanan			Muthukulam	58

DATE OF						
Offence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of Trial	Sentence or Order
14.10.17	15.10.17	A1-A5 17.10.2020 A6 05.09.23	A1-A5 17.10.2020 A6 05.09.23	04.08.205	16.04.26	18.04.26

The case having been finally heard on 16.04.26, the court on 18.04.26 delivered the following: -

J U D G M E N T

The Sub Inspector of Police, Kayamkuam Police Station, filed the charge sheet against the accused persons for the offences

punishable under Sections 3, 4, 5(a), 7(1)(b) and 7(2)(b) of the Immoral Traffic Prevention Act, 1956.

2. Prosecution case, in brief, is as follows:- The 4th and 5th accused, with the intention of earning unlawful gain by carrying on prostitution on a commercial basis, were engaged in immoral activities at Ragam Residency functioning in Kottuvallil Arcade, situated opposite to the Government Girls Higher Secondary School, Kayamkulam, which is owned by the 6th accused, who was also working there as the receptionist. With the knowledge and consent of the 6th accused, the 1st accused was found acting as an agent for 4th and 5th accused. The 2nd accused and the 4th accused were seen engaging in prostitution in Room No. 150, and the 3rd accused along with the 5th accused were seen in prostitution on a commercial basis in Room No. 111, while the 1st accused was present in Room No. 116 facilitating the said activities. Thus, the accused have committed the offences as alleged above.

3. On filing the final report, the case was taken on file and summons was issued to the accused persons pursuant to which the accused appeared before the Court. Copies of the prosecution records were furnished to them. After hearing, charge under Sections 3, 4, 5(a), 7(1)(b), and 7(2)(b) of the Immoral Traffic Prevention Act, 1956 were read over and explained to them in Malayalam. They pleaded not guilty and claimed to be tried.

4. From the side of the prosecution, witnesses PW1 and PW2 were examined and documents Ext. P1 to 13 were tendered in evidence and marked to prove the prosecution case. The learned Assistant Public Prosecutor gave up CW2 to CW9 as their evidence would not improve the prosecution case.

5. After the prosecution witnesses were examined, the incriminating circumstances that appeared against the accused were put to the accused in the examination of the accused under

Section 313(1)(b) of the Code of Criminal Procedure, 1973. They denied them all. The accused was called upon to enter his defence. However, no oral or documentary evidence was adduced from the side of the defence.

6. Heard both sides and analysed the records.

7. The following points arise for consideration: -

1. *Whether the accused persons were engaged in Prostitution in or in the vicinity of a public place?*
2. *Whether the accused persons kept a brothel?*
3. *Whether the accused persons lived on the earnings of prostitution?*
4. *Whether the accused persons procured, induced, or took a person for Prostitution*
5. *What is the order or sentence if found guilty and convicted?*

8. **Point Nos. 1 to 4:-** For the sake of convenience and brevity and to avoid repetition of facts, these points are considered together.

9. PW1 deposed that on 14.10.2017, he was working as a Civil Police Officer at Kayamkulam Police Station. On that day, he was on duty in connection with this case along with PW2. He deposed that the offence in this case was detected in his presence, and that PW2 had prepared a search list in connection with the case.

10. PW2 deposed that on 14.10.2017, while he was serving as Circle Inspector at Kayamkulam, he received information that illegal prostitution for monetary gain was being carried on at Raga Residency, situated to the west of Kayamkulam Girls High School, whereupon he prepared Ext. P1 Search Memorandum and forwarded it to the Court. He deposed that thereafter, he proceeded to Raga Residency with a police party including women police, along with witnesses, and upon reaching the reception of the establishment, a

person who was present there identified himself as Thularam Lama, a native of Assam and the room boy of the establishment, and stated that the 6th accused, who was the owner, had left the premises shortly before their arrival. PW2 further deposed that on enquiry, the room boy informed them that 3 rooms were occupied, and that the police party thereupon proceeded to inspect the first floor at around 4:00 p.m. He deposed that Room No. 110 was found open, and the person therein identified himself as the 1st accused, and that the keys of Room Nos. 109, 110 and 111 were found lying on the bed in Room No. 110. On being questioned, the 1st accused failed to give a satisfactory reply. PW2 further deposed that Room No. 109 was then opened using the key found on the 1st accused's bed, and on inspection, the 2nd accused and the 4th accused were found engaged in sexual intercourse on the bed therein. After they dressed, they identified themselves. They were then handed over to the police party. Thereafter, Room No. 111 was opened and inspected, wherein the 3rd accused and the 5th accused were found engaged in sexual intercourse, who identified themselves. All the persons were brought to Room No. 109 and questioned in detail, wherein they gave statements disclosing the commission of the offence. PW2 deposed that accused 1 to 5 were arrested in accordance with the law and Ext. P2 series arrest memos and Ext. P3 series inspection memos were prepared. Ext. P4 search list was prepared, based on which Ext. P5 FIR was registered. He deposed that Ext. P6 to P8 potency tests were conducted in respect of the 1st to 3rd accused and Ext. P9 and Ext. P10 medical examination was conducted in respect of the 4th and 5th accused. The property seized from the accused was presented before Court under Ext. P11 Form 151A. He further deposed that Ext. P12 report was submitted to the Court identifying the full name and address of the 6th accused, and that Ext. P13 ownership certificate of the rooms where the offence occurred was

obtained from CW9 and produced along with the charge. He deposed that after recording the statements of all witnesses, the investigation was completed and a charge sheet was filed before the Court.

11. For an offence under Section 7 of the Immoral Trafficking Act, the prosecution must establish that the sexual intercourse took place in a hotel, lodge, or similar establishment, and crucially, that it was an act of prostitution, i.e., that it was carried out for hire or reward. While PW2 deposed that the 2nd and 4th accused were found engaged in sexual intercourse in Room No. 109, and the 3rd and 5th accused were similarly found in Room No. 111, no credible and admissible evidence has been placed before this Court to show that the said acts were committed in exchange for money or any other consideration. In cross-examination, when PW2 was asked whether he had obtained any evidence of money being paid or received, his response that money was found in the possession of the accused is wholly insufficient to establish the nexus between the sexual acts and monetary payment that is the essential ingredient of prostitution as defined under Section 2(f) of the Act. The mere possession of currency by the accused does not, in law or in reason, establish that the sexual acts were in exchange for hire or reward. The definition of prostitution under the Act requires sexual exploitation or abuse for commercial purposes, and this ingredient has not been proved.

12. An offence under Section 3 requires the prosecution to establish that the premises in question were used as a brothel, i.e., that they were being used for purposes of prostitution. The 1st accused was found in Room No. 110 of the establishment with keys to Rooms 109 and 111 in his possession. The prosecution seeks to project the 1st accused as the person managing the establishment on behalf of the 6th accused. However, for the 1st accused to be convicted under Section 3, it must be shown that he was keeping or

managing a brothel. Given the failure of the prosecution to establish the commercial element of the sexual acts discovered, it follows that the premises cannot be termed a brothel within the meaning of the Act. Moreover, PW2 himself admitted in cross-examination that the 6th accused was not arrested at the scene or thereafter. In the absence of credible evidence connecting the management of the premises to a commercial sexual enterprise, the charge under Section 3 fails against all accused.

13. Section 4 penalises any person who knowingly lives on the earnings of prostitution. This charge presupposes the establishment of prostitution itself. Since the prosecution has failed to prove that the acts discovered during the raid constituted prostitution for hire or reward, no accused can be held to have lived on the earnings of prostitution. The charge under Section 4 therefore, stands unproved.

14. Section 5(a) requires proof that the accused procured, induced, or took any person for the purpose of prostitution. No independent evidence has been adduced by the prosecution to establish this charge. The solitary evidence is that of PW2, whose testimony establishes only that persons were found engaged in sexual intercourse, and does not disclose any act of procurement, inducement or taking for the purpose of prostitution. The charge under Section 5(a) is therefore not established.

15. Having regard to the totality of the evidence on record the prosecution has failed to prove beyond reasonable doubt that the accused committed the offences charged. The accused are entitled to the benefit of doubt.

16. **Point No. 5:** In the light of the findings in point numbers 1 to 4, the accused are found not guilty of the offences punishable under Sections 3, 4, 5(a), 7(1)(b) and 7(2)(b) of the Immoral Traffic Prevention Act, 1956.

17. In the result, the accused are hereby acquitted of the said offences under Section 248(1) of the Code of Criminal Procedure, 1973. They set at liberty and his sureties are discharged.

18. MO1 shall be confiscated after the period of appeal or revision, and if such appeal or revision is preferred, after the disposal of the same.

(Dictated to the Confidential Assistant, typed by her in the office computer, corrected and pronounced by me in the open Court on the 18th day of April, 2026)

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE - I

A P P E N D I X

WITNESSES EXAMINED FOR PROSECUTION: -

Prosecution Witness No.	Name Of Witness	Description
PW1	Biju	Search list witness
PW2	K Sadan	Investigating Officer

EXHIBITS MARKED FOR PROSECUTION: -

Exhibit No.	Description of the Exhibit	Proved by/Attested by
P1	Search Memo dated 14.10.17	PW2
P2	Series ((5Nos) Arrested Memo dated 14.10.17	PW2
P3	Series (5 Nos) Inspection Memo dated 14.10.17	PW2

P4	Search List dated 14.10.17	PW2
P5	FIR dated 15.10.17	PW2
P6	Medical Certificate(S P) dated 14.10.17	PW2
P7	Medical Certificate(S.P) dated 14.10.17	PW2
P8	Medical Certificate(S.P) dated 15.10.17	PW2
P9	Medical Certificate (SP) dated 15.10.17	PW2
P10	Medical Certificate (SP) dated 15.10.17	PW2
P11	Property List dated 16.10.17	PW8
P12	Report (Name and Address of A6) dated 16.10.17	PW2
P13	Ownership Certificate dated 30.11.18	PW2

WITNESSES AND EXHIBITS FOR DEFENCE: - Nil

MATERIAL OBJECTS MARKED: - Nil

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE - I