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Kaplan Vs. California

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Court : US Supreme Court

Decided On : 1974

Appeal No. : 419 U.S. 915

Appellant : Kaplan

Respondent : California

Judgement :

KAPLAN v. CALIFORNIA - 419 U.S. 915 (1974)
U.S. Supreme Court KAPLAN v. CALIFORNIA , 419 U.S. 915 (1974)

419 U.S. 915

Murray KAPLAN
v.
State of CALIFORNIA.
No. 73-1722.

Supreme Court of the United States

October 21, 1974

On petition for writ of certiorari to the Appellate Department of the Superior Court of California, for the County of Los Angeles.

The petition for a writ of certiorari is denied.

Mr. Justice BRENNAN, with whom Mr. Justice STEWART and Mr. Justice MARSHALL join, dissenting.

Petitioner was convicted in the Municipal Court of Los Angeles of selling an allegedly obscene book in violation of California Penal Code 311.2, which provided in pertinent part at the time of the alleged offense as follows:

> 'Every person who knowingly . . . prepares, publishes, prints, exhibits, distributes, or offers to distribute . . . any obscene matter, is guilty of a misdemeanor.'

As used in 311.2, 'obscene' meant that:

> 'to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i. e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description of such matters and is matter which is utterly without redeeming social importance.' Id., at 311(a).

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On appeal, the Appellate Department of the Superior Court of California for the County of Los Angeles affirmed the conviction. Certification to the Court of Appeal was sought and denied. This Court then granted certiorari, vacated the judgment of the Appellate Department, and remanded for consideration in light of Miller v. California, 413 U.S. 15 (1973), and companion cases. 413 U.S. 115 (1973). On remand, the Appellate Department again affirmed the conviction.

Mr. Justice DOUGLAS, being of the view that any state or federal ban on, or regulation of, obscenity is prohibited by the Constitution, Miller v. California, 413 U.S. 15 , 43-48; Paris Adult Theatre v. Slaton, 413 U.S. 49 , 70-73, would grant certiorari in this case and summarily reverse.

It is my view that 'at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents.' Paris Adult Theatre I v. Slaton, 413 U.S. 49, 113 (1973) (Brennan, J., dissenting). It is clear that, tested by that constitutional standard, 311.2, as it incorporated the definition of 'obscene' of 311, was constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in Miller v. California, 413 U.S. 15, 47 (1973), I would therefore grant certiorari and, since the judgment of the Appellate Department was rendered after Miller, reverse.* In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See Heller v. New York, 413 U.S. 483 , 494, 495 (1974) (Brennan, J., dissenting).

Further, it does not appear from the petition and response that the obscenity of the disputed materials was adjudged by applying local community standards. Based on my dissent in Hamling v. United States, 418 U.S. 87 (1974), I believe that, consistent with the Due Process

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Clause, petitioner must be given an opportunity to have his case decided on, and introduce evidence relevant to, the logal standard upon which his conviction has ultimately come to depend. Thus, even on its own terms, the Court should vacate the judgment below and remand for a determination whether petitioner should be afforded a new trial under local community standards. Footnotes

[Footnote *] Although four of us would grant and reverse, the Justices who join this opinion do not insist that the case be decided on the merits.

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