Marks Vs. Leis

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Court : US Supreme Court

Decided On : 1975

Appeal No. : 421 U.S. 940

Appellant : Marks

Respondent : Leis

Judgement :

MARKS v. LEIS - 421 U.S. 940 (1975)
U.S. Supreme Court MARKS v. LEIS , 421 U.S. 940 (1975)

421 U.S. 940

Stanley MARKS et al.
v.
Simon L. LEIS, Jr., etc., et al.
No. 74-793.

Supreme Court of the United States

April 28, 1975

The judgment of the United States District Court for the Southern District of Ohio is vacated and the cause is remanded for further consideration in light of Sosna v. Iowa, 419 U.S. 393 , 42 L. Ed.2d 532, n. [Footnote 3] (1975), and Huffman v.

Pursue, Ltd., 420 U.S. 592 (1975).

Mr. Justice BRENNAN, with whom Mr. Justice MARSHALL joins, dissenting.

Nuisance proceedings were begun against appellants in Ohio courts on the theory that some of the books sold in a bookstore on premises owned by one appellant and leased by the others were obscene, and that the bookstore was therefore a nuisance. The Ohio statutory scheme underlying these nuisance proceedings is outlined in Huffman v. Pursue, 420 U.S. 592 (1975).

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Appellants filed suit in Federal District Court while the state proceedings were pending seeking injunctions against the state proceedings. The parties agreed not to go forward with the state court proceedings until the Federal District Court litigation was completed. The federal court refused to enjoin the state proceedings because it believed that Ohio could treat as a nuisance and close for a year a bookstore which sold some obscene materials, without running afoul of the constitutional proscriptions against prior restraint of materials protected by the First Amendment.

A similar issue was presented on the merits in Huffman, supra. However, the Court refused to pass on the merits, because it believed that the federal court was barred from intervening in the state proceedings. The Court now remands this case for consideration in light of Huffman, supra, and Sosna v. Iowa, 419 U.S. 393 . But I think it clear that even if Huffman was correctly decided, see Brennan, J., dissenting, 420 U.S., at 613, it does not govern this case. Here, the prosecuting authorities expressly agreed to submit to federal court jurisdiction, and they do not in this Court argue that the District Court could not have enjoined the state proceedings even if it believed them unconstitutional. Thus, any reliance on the principles of Younger v. Harris, 401 U.S. 37 (1971), has been waived. See Sosna v. Iowa, supra, 419 U.S., at 396 n. 3 n. 3.

I need not reach the question of whether the Ohio scheme constitutes an impermissible prior restraint upon books never judicially determined to be

obscene, because I believe that suppression even of specific books adjudicated obscene in nuisance proceedings is unconstitutional.

Ohio defines obscenity as follows:

> '(A) any material or performance is 'obscene' if,

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when considered as a whole and judged with reference to ordinary adults, any of the following apply:

> '(1) Its dominant appeal is to prurient interest;
>
> '(2) Its dominant tendency is to arouse lust by displaying or depicting nudity, sexual excitement, or sexual conduct in a way which tends to represent human beings as mere objects of sexual appetite;
>
> '(3) Its dominant tendency is to arouse lust by displaying or depicting beastiality or extreme or bizarre violence, cruelty, or brutality;
>
> '(4) It contains a series of displays or descriptions of nudity, sexual excitement, sexual conduct, beastiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, and cumulative effect of which is a dominant tendency to appeal to prurient interest, when the appeal to such interest is primarily for its own sake or for commercial exploitation, rather than for a genuine scientific, educational, sociological, moral, or artistic purpose.' Ohio Rev. Code Ann. 2905.34.

It is may 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.' Paries Adult Theatre I v. Slaton, 413 U.S. 49, 113 (Brennan, J., dissenting). It is clear that, when tested by that constitutional standard, 2905.34, is unconstitutionally

overbroad and therefore facially invalid. For the reasons stated in my dissent in Miller v. California, 413 U.S. 15, 47 (1973), suppression of any materials whatever on

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the basis of the definition of obscenity in 2905.34 is, in my view, impermissible. Because the judgment of the District Court was rendered after Miller, I would reverse.

Mr. Justice DOUGLAS took no part in the consideration or decision of this appeal.