State Vs. Mainabai

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Court : Mumbai

Decided On : Sep-28-1961

Reported in : AIR1962Bom202; (1962)64BOMLR127; ILR1962Bom134

Judge : Patel and ;Chandrachud, JJ.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 13, 14 and 22; Code of Criminal Procedure (CrPC) , 1898 - Sections 156(2), 529 and 537

Appeal No. : Criminal Appeal No. 574 of 1961

Appellant : State

Respondent : Mainabai

Advocate for Def. : U.R. Lalit, Adv.

Advocate for Pet/Ap. : V.H. Gumaste, Addl. Govt. Pleader

Judgement :

Patel, J.

(1) This is an appeal by the State against the acquittal of the respondent in appeal by the Additional Sessions Judge, Sholapur, of an offence under section 3 and 4 of the Suppression of Immoral Traffic in Women Girls Act, 1956. It was alleged

against the accused that she kept and managed brothel where two other women as her inmates were lodged and that she was living on the earnings of those women's prostitution. Along with the accused the two who were so used were also tried. The respondent was charged for contravening section 3(1) and section 4 of the Act. It is not necessary to refer to the case of the other two accused. The respondent pleaded guilty to the charge against her. The learned Judicial Magistrate, First Class at Barsi, before whom she was put up, accepted this plea of guilty and convicted her of the offences with which she was charged and sentenced her to six months simple imprisonment and a fine of Rs. 10/- for each offence. He directed the substantive sentences to run concurrently.

(2) The accused went in appeal to the Sessions Court and the appeal was heard by the Additional Sessions Judge at Sholapur. The learned Additional Sessions Judge held that inasmuch as the investigation was carried on by an officer who had no authority to do so, there was no basis for the prosecution, and therefore the conviction was illegal. Though he negatived the contention of the accused that the plea recorded by the Magistrate was not genuine, as the other two points were answered in her favour, he acquitted her of these offences.

(3) The learned Judge relied upon sections 13 and 14 of the Act for his conclusion. The view of the learned Judge finds support in the decision of the Supreme Court of the 3rd of May, 1961 in the case of Delhi Administration v. Ram Singh in : [1962]2SCR694 The accused was sought to be prosecuted under section 8 of the Act. The investigation was made by a Sub-Inspector of Police. After the investigation was completed, he filed a chargesheet before the Magistrate. On objection being taken to the investigation, the Magistrate quashed the charge-sheet holding that the Special Officer, was alone competent to investigate the case and that the Sub-Inspector could not have investigated it: It was held by K. Subba Rao and Raghubar Dayal, JJ. That:

'The special Police Officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act, even though they are

cognizable offences.'

Mr. Justice Mudholkar differed from the majority view. The appeal, therefore, came to be dismissed.

(4) This, however, does not end the matter. In the case before the Supreme Court the objection was taken at the initial stage and the accused was discharged. The learned Additional Government Pleader relied on section 156(2) and section 529 of the Criminal Procedure Code and contends that even assuming that the investigation was illegal or irregular that cannot affect the jurisdiction of the Court. He relies on Rustom Ardeshir v. Emperor, 49 Bom LR 821: AIR 1948 Bom 163, which supports his contention. It may be that if a person is illegally arrested he may be appropriate proceeding get himself released. It may be that if the action of the Police Officer is illegal or improper he may not be able to protect himself in a proceeding against him. And though the Court may strongly disapprove the illegality in the investigation 'the question' as Lord Tenterden, C. J. Posed is:

' . . . . . .Whether if a person charged with a crime is found in this country, it is the duty of the Court to take care that such a party shall be amenable to justice or whether we are to consider the circumstances under which he was brought here.'

He answered it saying: 'I thought, and I still continue to think, that we cannot enquire into them.' These observations were quoted with approval by Lord Macmillan in Prabhu v. Emperor, . The following observations of Lord Chief Justice Cockburn in the charge to the Jury in Queen v. Nelson and Brand, quoted at page 839 of 46 Bom L. R. Are pertinent. Says He:

' . . . . . We leave you (the party wrongfully brought before the Court) to settle with the party who may have done an illegal act in bringing you into this position; settle that with him.'

(5) It is next contended that even if the report of the Police Officer be bad qua report, it can still be regarded as a complaint and the Magistrate can proceed with the case. This view has been taken in Emperor v. Shivaswami, 29 Bom LR 742: AIR 1927 Bom 440 and Raghunath v. Emperor, 34 Bom LR 901 : AIR 1932 Bom

610. The contrary view expressed in Emperor v. Chandri has been explained in 49 Bom LR 821: AIR 1948 Bom 163 in the principle of Shivaswami 29 Bom LR 742 : AIR 1927 Bom 440 and Raghunath's 34 Bom LR 901: AIR 1932 Bom 610, cases has been accepted and follows.

(6) The above view is accepted in the pronouncements of the Supreme Court in cases arising under the Prevention of Corruption Act. In H. N. Rishbud v. State of Delhi, (S) : 1955 CriLJ526 the following observations are pertinent.

'A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in S. 190, Criminal P. C. As the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance Section 190, Criminal P. C. Is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings.' The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But S. 109 does not. While no doubt, in one sense, clauses (a), (b) and (c) of section 190 (1) are conditions requisite for taking of cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of section 190(1) and in any case cognizance so taken in only in the nature of error in a proceeding antecedent to the trial. To such a situation, section 537, Criminal P. C. Is attracted.

'If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provisions relating to investigation, there can be no doubt that the result of the trial which follows it cannot he set aside unless the illegality.... in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled. and Lumbhardar Zutshi v. The King, AIR 1950 PC 26, Ref. To.

Hence, where the cognizance of the case has in fact been taken and the case has proceeded to termination , the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.'

There is nothing in this Act which makes section 156(2) and sections 529 and 537 of the Code inapplicable. This being so, we must hold that illegal or improper investigation and arrest does not in any manner affect the jurisdiction of the Magistrate to take cognizance of the offence. This aspect of the case was not presented before their Lordships in : [1962]2SCR694 . We must, therefore, consider whether any prejudice is caused to the accused by reason of the illegality of the investigation and the arrest. In the present case the answer is clearly no. The accused admits the facts alleged against her and these facts clearly make out an offence with which she is charged.

(7) Mr. Lalit on behalf of his client challenges the jurisdiction of the learned Magistrate to try the case. He contends relying on section 22 of the Act that only a Magistrate as denied in section 2 sub-section (c) could take cognizance of the offence and that the Judicial Magistrate, First Class, not being specially authorised had no jurisdiction to deal with the case. It is not possible to uphold the contention in view of the provisions of the Act. Under the scheme of the Act, large powers are given by sections 16, 18, 19 and 20 to the Magistrates for the purposes of the Act. Section 16 gives power to the Magistrate to direct the special police officer to enter a brothel and to remove therefrom the girl mentioned in that Section and produce her before him. Section 19 enables a woman or a girl who is carrying on prostitution to make an application to a Magistrate for an order that she may be kept in a protective home. Section 20 gives powers to a Magistrate to direct the removal of a woman or a girl from the place where she is suspected of carrying on prostitution. Section 2 sub-section (c) defines the word 'Magistrate' to mean a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate, or a Magistrate of the first class specially empowered by the State Government, to exercise jurisdiction under the Act. It would only mean that wherever the word 'the Magistrate' occur such as in sections 16, 18, 19, 20 it must have the meaning as given in section 2(c). It is not and could not have been intended that it should control in any manner the jurisdiction of the Court which could take cognizance of

the offence. The only section on which Mr. Lalit relies is section 22. It provides that no Court inferior to that of a Magistrate as defined in clause (c) of section 2 shall try any offence under sections 3, 4, 5, 6, 7 and 8. It is clear that this is not a section which in terms excludes the jurisdiction of any Court to take cognizance of an offence under the Act. It only provides that the Court which takes cognizance of an offence under the Act, shall be a Court of either equal or superior jurisdiction to that of the Magistrate named. The other provisions of the Act show that it could not be otherwise.

(8) Section 3 of the Act prescribes for the first offence, rigorous imprisonment for not less than one year and not more than three years, and also a fine. In the case of second or subsequent conviction, it prescribes imprisonment for not less than two years and not more than five years in addition to fine. Similar punishments are provided by section 3(2), section 4 and section 5. Under the provisions of the Criminal Procedure Code, which must be assumed to have been known to the Legislature, when it framed these provisions, a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate or a Magistrate of the First Class could not impose a sentence of more than two years and fine. Inasmuch as the provisions of the section prescribe sentences in excess of those that can be awarded by any one of the aforesaid Magistrates, it is clear that the intention was that a Court equal to or superior should try these offences. If the intention were as contended for by Mr. Lalit, the section would have been entirely differently worded. Mr. Lalit relies on the observations of their Lordships of the Supreme Court in the judgment in : [1962]2SCR694 , referred to above, where it is said:

'The Act creates new offences, provides for the forum before which they would be tried and the orders to be passed on conviction . . . . .'This observation cannot mean that the Court or the Magistrate as defined by section 2 (c) only would have jurisdiction. Their Lordships meant to convey that Court of a particular or a higher jurisdiction is prescribed. It is impossible therefore to hold that the learned Magistrate had no jurisdiction to deal with the case.

(9) In the result the appeal must be allowed. The order of acquittal passed by the learned Additional Sessions Judge is set aside and the order of conviction and

sentence passed by the learned Magistrate restored except as to the fine. Warrant to issue.

(10) Appeal allowed.