

Mt. Naziran Vs. Emperor

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Court : Allahabad

Decided On : Feb-16-1932

Reported in : AIR1932All537; 137Ind.Cas.209

Appellant : Mt. Naziran

Respondent : Emperor

Judgement :

ORDER

Sulaiman, J.

1. This case has been referred to a Division Bench because a learned Judge of this Court differed from the opinion expressed in Criminal Revision of Muhammadi v. Emperor : AIR1932 All110 . The-Municipality of Agra made the following bye-law in 1917;

No public prostitute shall reside in any house or building or ply her trade within the-municipal limits, except on both sides of the streets.

2. The accused is a public prostitute carrying on her trade and residing in a place not within the excepted streets. She had been fined thrice before and was found guilty of continuing her trade. Accordingly the Magistrate convicted her again and imposed a fine of eight annas per day for the period during which it was found that she had broken the bye-law. The learned Sessions Judge has referred the case to

the High Court in view of the decision in the Criminal Revision referred to above. Power has been conferred on Municipal Boards under Section 298-H(c), U.P. Municipalities Act (Act 2 of 1915) for making a bye-law for the following purpose among others:

Prohibiting in any specified street or area, the residing of public prostitutes and the keeping of a brothel or the letting or other disposal of a house or building to public prostitutes or for a brothel.

3. The definition of Municipality as given in Section 2(9) of the Act is as follows:

Municipality means any local area which is a municipality by reason of a notification issued under Section 3 or, subject to the provisions of the said section, any local area which was a Municipality at the time immediately preceding the commencement of this Act.

4. It is therefore clear as pointed out by Bennet, J., that the Municipality is itself an area the limits of which are specified, well known and defined. The bye-law undoubtedly prohibits public prostitutes from residing 'within the municipal limits' except certain streets. It seems to us that the bye-law does specify the rest of the area within the municipal limits other than the excepted streets as the area in which public prostitutes shall not reside. We can see no force in the contention that the area in which residence is prohibited must be a smaller area and not a larger area of the town. There is no such restriction. It is however not necessary in this case to decide whether the word 'area' may not include the entire area within the municipal limits. It has been suggested that there can be no specification of an area unless a bye-law, mentions or names or designates particular streets or parts of mohallas. But when the bye-laws themselves show that the municipal limits are the mention of such limits with the exception of certain parts of it does amount to specifying a particular area. A new point has been urged before us which apparently was not discussed before the learned Judge who referred this case to us. The bye-law as quoted in the order of reference is not complete. The last portion of it is as follows:

Exception prostitutes owning houses in places other than those mentioned above may continue to reside in such houses, but future acquisitions of property shall not entitle them to live and carry on their profession there.

5. It is quite clear that reading the whole bye-law together with the exception in it, there is no absolute prohibition against prostitutes residing within the area other than the streets excepted. One class of prostitutes, namely, those who own houses, are still allowed to carry on their trade within such area. This involves an invidious distinction between the two classes of prostitutes. As held in *Chanchal v. Emperor* : AIR1932 All70 there should be no discrimination of this kind; the prohibition must be general and of universal application within the specified area and must not make an exception in favour of any particular group or class of prostitutes. In view of this last consideration we are of opinion that the bye-law, inasmuch as it failed to lay down an absolute prohibition within the specified area, was ultra vires and illegal. The Municipal Board would be well advised to reconsider the bye-law so as to make it of a general application within specified area where it intends that prostitutes should be prohibited from residing. We accordingly accept this reference though on a ground different from that on which it was based; and setting aside the conviction of the accused acquit her of the offence with which she was charged.