

Smt. Razia Vs. the State

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Court : Allahabad

Decided On : Jan-01-1957

Reported in : AIR1957All340; 1957CriLJ612

Judge : Raghubar Dayal and ;Tandon, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 298, 298(1) and 298(2)

Appeal No. : Criminal Revns. Nos. 1363, 1365, 1366, 1374, 1375 and 1416 of 1954

Appellant : Smt. Razia

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : M.A. Kazmi, Adv.

Disposition : Application dismissed

Judgement :

Raghubar Dayal, J.

1. These are six revisions by six different persons whose conviction by a magistrate for contravening a bye-law framed by the Najibabad Municipal Board, under Clause (e), item H, List I, of Sub-section (2) of Section 298, of the U. P.

Municipalities Act (II of 1916), prohibiting public prostitutes from residing and from the keeping of brothels within the limits of the municipality, has been upheld by the Sessions Judge on appeal.

2. Two points have been urged on behalf of the applicants. One is that the Municipal Board of Najibabad could not frame a bye-law prohibiting the residence of, or the keeping of brothels by, public prostitutes within the entire limits of the municipality, and the other is that, it being not held by the courts below that the applicants were public prostitutes, they could not be convicted for contravening the aforesaid bye-law.

3. Section 298 of the Municipalities Act empowers a board to make bye-laws by special resolution applicable to the whole or any part of the municipality for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under the Act. Sub-section (2) of this section lays down that in particular, & without prejudice to the generality of the power conferred by Sub-section (1), the board may make any bye-law as described in List I mentioned in the sub-section. It follows that the power of the Board to make any bye-law is very general in view of Sub-section (1) of Section 298 and that this general power is not in any way restricted by the provisions of Sub-section (2). The bye-law to be framed by the municipality can be made applicable to the whole or any part of the municipality. The purpose of Sub-section (2) is simply to lay down explicitly for facility the purposes for which bye-laws could be made.

In this view of the matter, the impugned bye-law cannot be said to be outside the jurisdiction of the board to frame, the bye-law itself being a reasonable one and for the purpose of promoting or maintaining the health of the inhabitants of the municipality. Such bye-law has been held to be reasonable in the case of *Sona Bai v. The Municipality of Agra* : AIR1956 All736 when its validity was questioned on the ground that it contravened the fundamental rights given by Article 19 of the Constitution. The constitutional validity of the bye-law has not been questioned before us either on the ground that it contravened the provisions of Article 19 or Article 14.

4. We are further of opinion that the bye-law comes within the purview of Clause (e), item H, List I, of Sub-section (2) of Section 298 of the Municipalities Act. By this provision the Board is competent to frame a bye-law 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. It is contended for the applicants that the Municipal Board can specify particular streets or particular areas within the municipality as the localities in which such residence of the keeping of a brothel is prohibited but it cannot specify the entire limits of the municipality as a prohibited area for the residence of public prostitutes or the keeping of brothels.

Support for such a contention is sought from the case of *Mt. Muhammadi v. Emperor* : AIR1932 All110 . We do not agree with the contention and consider this case to be wrongly decided. Infact, the view taken in this case was not approved by a Division Bench in the other case referred to by the learned counsel for the applicants, i.e. the case of *Mt Naziram v. Emperor* : AIR1932 All537 (C). It was laid down by the Division Bench that the prohibited area may be described by carving out an area from the whole within which carved-out area the prostitutes were allowed to reside and that it was not the necessary requirement of this provision of law that the bye-law must mention every street or area which is prohibited specifically.

The prohibited area can be specified otherwise also, so long as it is not open to doubt which area is meant to be the prohibited area. The Division Bench left it open whether the expression 'area' would cover the entire area of the municipality or must refer to an area smaller than the entire area of the municipality. It observed: 'It is however not necessary in this case to decide whether the word 'area' may not include the entire area within the municipal limits'. This is the specific point which has been raised before us for decision. We see no justification for restricting the extent of the word 'area' in Clause (e), item H, List I, of Sub-section (2) of Section 298 of the Municipalities Act, to a locality smaller in area than the entire limits of the municipality. The entire limits can come within the expression 'area'. The only requirement is that the municipality should specify the area where the public prostitutes were not to reside.

It is not provided that the area so specified should be smaller than the limits of the municipality or that the municipality must provide an area within the municipality for the residence of such prostitutes and for the keeping of brothels. There is no good reason why it must be held that the legislature must have intended that the carrying out of a profession which he considered undesirable for the health of the inhabitants within a municipality must be the duty of the municipal board to provide.

5. In view of the above, we do not agree with the first contention for the applicants.

6. The second contention also has got no force. The applicants did not contend in the court of the magistrate that they were private prostitutes as distinguished from public prostitutes. Their allegation was that they were not prostitutes but were artists as their profession was to act as singers. This contention was not accepted by the magistrate who, on the evidence, held that they were prostitutes. Two of the applicants namely Razia in Criminal Revision No. 1363 of 1954 and Sharbati in Criminal Revision No. 1416 of 1954 pleaded guilty before the committing magistrate and the question of their being public prostitutes or not was not raised in appeal before the Sessions Judge.

The other four applicants did not plead guilty. In their cases the magistrate held on the evidence that they were prostitutes. The order shows that he used the word 'prostitute' meaning exactly what is said to be meant by the expression 'public prostitute' according to the cases in *Municipal Board, Etah v. Mt. Asghari Jan* : AIR1932 All264 ; *Legeshri v. State*, 1955 All LJ 138 (E) as the evidence led in the cases was that drunkards and bad-charactered people used to visit the applicants' places and that even the act of prostitution had been watched by some witnesses in some of these cases. At the hearing before the Sessions Judge, it appears from his judgment, the finding of the magistrate was understood to be a finding that the applicants were public prostitutes and the learned counsel for the appellants did not assail that finding.

We are of opinion that a prostitute would answer the description of a public prostitute unless she be kept by some person exclusively in which case she can be said to be kept by that person and to be not available for the purposes of

prostitution to others. The expression 'prostitute' itself means a woman who offers her body to indiscriminate sexual intercourse, especially for hire. Such a person would answer the description of a public prostitute also. We are therefore of opinion, as already mentioned, that this contention that the applicants are not proved to be public prostitutes is not sound.

7. In view of the above, we dismiss this and the connected revisions. This order will govern Criminal Revisions Numbers 1365, 1366, 1374, 1375 and 1416 of 1954.

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