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Shakila Vs. State

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Court : Allahabad

Decided On : Mar-23-1961

Reported in : AIR1961All633; 1961CriLJ754

Judge : D.P. Uniyal and ;Ramabhadran, JJ.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 13, 16, 18 and 20; Code of Criminal Procedure (CrPC) , 1898 - Sections 5(2) and 190

Appeal No. : Criminal Revn. No. 1199 of 1960

Appellant : Shakila

Respondent : State

Advocate for Def. : Asstt. Govt. Adv.

Advocate for Pet/Ap. : C.S. Saran, Adv.

Disposition : Revision dismissed

Judgement :

Uniyal, J.

1. The question raised in this reference is 'whether a magistrate is competent to file a complaint against a person suspected of having committed an offence under the Suppression of Immoral Traffic in Women and Girls Act (104 of 1956),

hereinafter referred to as the Act.'

2. The facts briefly stated are that at about 9 p.m. on the 18th March 1959, Sri B. N. Rai, a Magistrate of the 1st Glass, Kanpur, found the applicant soliciting persons by words, gestures and wilful exposure of her person, for the purpose of prostitution. He placed her under arrest and filed a complaint for her prosecution under Section 8 of the Act. An objection was made by the applicant in court against her prosecution challenging the validity of the complaint on the ground that she could only have been prosecuted on a charge sheet submitted by a 'special police officer', appointed under the Act and not on a complaint filed by the Magistrate. Her objection was overruled by the trial court and the Additional Sessions Judge upheld that order in revision. She then filed a revision to this Court, out of which this reference has arisen.

3. The learned counsel appearing for the applicant has raised two contentions before us; firstly, that a 'special police officer' appointed under the Suppression of Immoral Traffic in Women and Girls Act, can alone initiate prosecution in respect of offences mentioned thereunder, and secondly, that the Act being a self contained enactment it was not permissible to enlarge the powers of a magistrate by reference to the provisions of the Cr. P. C., (hereinafter referred to as 'the Code').

4. The Suppression of Immoral Traffic in Women and Girls Act is a special law which prescribes a special procedure with respect to the arrest, investigation and trial of the offences mentioned in the Act. Section 2(i) defines a 'special police officer' as meaning a police officer, appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of the Act. Section 13 enacts that there shall be for each area to be specified by the State Government in this behalf, a special police officer appointed by or on behalf of that Government, for dealing with offences under this Act in that area.

It is further provided that in areas outside the Presidency towns of Madras, Calcutta and Bombay an officer of the rank of a Deputy Superintendent of police shall be appointed as a special police officer for dealing with offences under the Act. Section 14 makes all the offences punishable under the Act to be cognizable

offences. Section 15 makes provision for the search by special police officers of premises which may be suspected of being used for the purpose of prostitution. So much about the powers and functions of a 'special police officer' appointed under the Act.

5. Coming now to the powers which may be exercised by Magistrate with respect to offences falling under the Act, it is provided in Section 2(c) that a Magistrate specially empowered by the State Government shall exercise jurisdiction under the Act and that such Magistrate shall be a District Magistrate, a Sub Divisional Magistrate, a Presidency Magistrate or a Magistrate of the 1st Class. Under Section 12(4), a Magistrate on receiving information from the police or otherwise, that any person within the local limits of his jurisdiction habitually commits, or attempts to commit, etc., any offence under this Act, may require such person to show cause why she should not be ordered to execute a bond for her good behaviour, etc.

Section 16 indicates that where a Magistrate has reason to believe, from information received from the police or otherwise, that a girl apparently under the age of 21 years, is living, or is carrying on, or is being made to carry on prostitution in a brothel, he may direct the special police officer to remove the said girl from the brothel and produce her before him. Sub-section (2) of Section 16 further provides that the special police officer, after removing the girl from the brothel, shall produce her before the Magistrate issuing the order.

Section 18 gives power to a Magistrate to order eviction of the occupier of the premises, in respect of which he receives information from the police or otherwise that they are being used by prostitutes for carrying on their trade, etc. Similarly, Section 20 empowers a Magistrate to issue notice to a woman or girl requiring her to appear before him and show cause why she should not be required to remove herself from any place situate within the local limits of his jurisdiction, if he receives information that the said woman or girl resides in or frequents any place within the local limits of his jurisdiction.

6. Thus the Legislature has defined and clearly distinguished between the respective powers and functions of a special police officer and a Magistrate

specially empowered in that behalf. There does not appear to be any ambiguity as to the intention of the Legislature on this matter.

7. Under the Act the special officer alone is charged with the performance of police duties. He is to all intents and purposes a police officer whose powers are analogous to those of the police officer in charge of a police station in regard to the investigation of cognizable offences as contemplated by the Code.

8. It was urged that the Act has invested a special police officer with powers for dealing with offences and that this shows that no other person or authority is competent to initiate a prosecution for an offence made punishable thereunder. We are unable to accede to this argument. The expression 'dealing with offences' in Section 13(1) refers to the police powers, conferred on a special police officer. It does not and cannot enlarge his powers. It simply means that the special police officer has been charged with the performance of police duties, within a specified area for carrying out the purpose of the Act.

The Act provides a special machinery for the performance of police duties by an officer specially appointed for that purpose. To this extent, the Act makes a departure from the provisions of the Cr. P. C. Consequently, it follows that the duties, which are normally required to be performed by the officer in charge of a police station, shall he performed only by the special police officer, appointed under the Act.

9. The scheme and purpose of the Act clearly disclose that the special police officer, who has been invested with police powers may arrest an offender, carry out searches of premises used for the purpose of prostitution and file a charge sheet in court against a person suspected of having committed an offence under the Act. At the same time, the other modes of initiating prosecution as for example upon a complaint by a private party or upon his own knowledge or suspicion by a Magistrate, are not outside the Act.

The Act is silent upon these matters and it must, therefore, be held that the provisions of the Cr. P. C. would be applicable in regard to matters for which there is no specific provision in the Act. The above conclusion finds support by reference

to Sub-section (2) of Section 5 of the Code which states that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring, trying or otherwise dealing with such offences.

Therefore, in so far as the Act makes provision for the offences being dealt with in a particular manner and by a particular officer or class of officers, the provisions of the Act shall override the provisions of the general law. But in matters with respect to which the Act is silent the provisions of the general law will come into operation.

10. The learned counsel contended that the maxim 'expressio unius est exclusio alterius' applied to the case and that the special police officer having been invested with the power of dealing with offences under the Act, it should be held that the Legislature had impliedly prohibited cognisance of cases in any other manner than that provided by the Act. The maxim is based upon the probable intention of the Legislature. Hence where that intention is clear the principle of the maxim is not applicable. In Crawford's Construction of Statutes at page 336 the learned author observes:

'The principle is to be used only as a means of ascertaining the Legislative intent where it is doubtful and not as a means of defeating the apparent intent of the Legislature. Where the statutory language is plain and the meaning clear there can be no implied exclusion.'

11. In the present case the Legislature has clearly limited the power of the special police officer to those functions which are ordinarily performed by the police officer in charge of a police station. Hence it follows that the other modes of initiating prosecution, by way of complaint or otherwise have not been excluded. Consequently, it cannot be held that it was intended to exclude other methods of bringing offences to the notice of the court.

12. It would thus appear that the cognizance of an offence on the basis of a complaint filed by a magistrate is not prohibited by the Act. Indeed, a reading of Sections 16, 18 and 20 of the Act would go to show that a magistrate may take

cognizance on information received from the police or otherwise in respect of offences mentioned therein. Thus, it is not a condition precedent for the initiation of prosecution against an offender that the information should be laid before a magistrate by the special police officer.

The magistrate is empowered under the Act to take cognizance of an offence on information received from any source or upon his own knowledge of the facts constituting the offence. The Act has not placed any fetter on the powers of a magistrate to take cognisance of an offence from any source whatsoever. There is, therefore, no warrant for the proposition that cognisance of an offence under the Act cannot be taken except upon a report submitted by a special police officer.

13. We are clearly of the opinion that Section 13 does not create any bar to the filing of a complaint by a magistrate of the 1st Class against a person suspected of having committed an offence under the Act and that the court of a magistrate,as defined in the Act has jurisdiction to take cognisance of an offence on such complaint.

14. This revision accordingly tails and is dismissed.

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