

Emperor Vs. Narain

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Court : Allahabad

Decided On : Nov-19-1935

Reported in : AIR1936All129

Appellant : Emperor

Respondent : Narain

Judgement :

Allsop, J.

1. The respondent Narain Kachi was sentenced by a Magistrate in Agra to rigorous imprisonment for a period of one month under the provisions of Section 236(1), Cantonments Act, for importuning certain British soldiers to the commission of sexual immorality. He appealed to the Sessions Judge who acquitted him upon a point of law. The Section under which the respondent was convicted is in the following terms:

Whoever in a cantonment loiters for the purpose of prostitution or importunes any person to the commission of sexual immorality shall be punishable with imprisonment which may extend to one month or with fine which may extend to Rs. 200.

2. The charge against the respondent was that he had approached certain soldiers and had offered to supply to them a girl for Rs. 2 or a boy for Re. 1. The Sessions

Judge held that nobody could be convicted under the section unless he was loitering for the purpose of prostituting himself or importuned any person to the commission of sexual immorality with himself. The learned Judge said:

It appears from the scheme of the, section that the person importuning any person to the commission of sexual immorality must be the boy or the girl who offers himself or herself for sexual immorality and not a third person who only acts as a go-between.

3. In his opinion the combination of loitering with importuning clearly showed that the person punishable must be the object of the sexual immorality. A Bench of the Bombay High Court in *Emperor v. Maridas* 1926 Bom 227 said that it would seem to be desirable that a pimp should be liable to be prosecuted just as well as the woman who was to be the subject of prostitution. We are in agreement with this view and we do not think that there is anything in the wording of the section which justifies the conclusion to which the learned Sessions Judge came. The section does not say that the person must loiter for the purpose of his or her own prostitution or must importune another to the commission of sexual immorality with the person so importuning. Even if the charge was one of loitering it does not seem to us that it would necessarily be true that nobody could be prosecuted unless he or she was loitering for the purpose of prostituting his or her own person. We can conceive of a case where a woman loiters as a decoy so that she may give the impression that she is loitering for the purpose of prostitution intending to take any man who accosts her to some other house of ill fame where he may have intercourse with some other woman. We are not however in this case to consider whether a person who loiters for the purpose of the prostitution of others is liable to punishment. We are concerned with the second part of the section and it is perfectly clear that there is nothing in the wording which says that the person importuning must importune to the commission of sexual immorality with himself or herself. 'We cannot read into the section words which are not there.

4. We are satisfied therefore that the respondent was guilty of the offence with which he was charged if the facts were true. We may mention that it has been argued on behalf of the respondent that the conviction would be bad in any event

on two other points of law. In the first place it is said that the trial was vitiated by the fact that he was charged with a large number of offences. This argument is based upon the fact that the witnesses have stated that the respondent approached them a number of times with his offers of procuring women or boys for them. The trial was a summary trial and there was consequently no formal charge. It does not appear to us from the judgment of the learned Magistrate that it was intended to charge the respondent with an offence for each occasion on which he approached the witnesses. We think that the statement about the number of times when the respondent is supposed to have approached them were made merely in order to explain the reasons why proceedings were taken. In any event it has not been suggested that there was any reason why the respondent should have been prejudiced in defending himself. We do not think therefore that there is any force in the argument based on the allegation that the respondent was charged with several offences at the same trial.

5. The other legal argument is that the learned Magistrate should not have instituted a prosecution because no proper complaint was made to him in accordance with the provisions of Section 236(2), Cantonments Act. We find that the Regimental Provost Sergeant made a complaint in writing which he sent to the Sub-Inspector of Police and which the Sub-Inspector forwarded in original to the Magistrate. The Magistrate had before him the complaint of the Regimental Provost Sergeant and it was on that complaint that he acted. The Regimental Provost Sergeant was a member of the Military Police employed in the Cantonment and the Magistrate has found that at least part of the offence was committed in the presence of the Regimental Provost Sergeant. It appears that he was present when some of the witnesses met the respondent in J pursuant of a previous agreement with them and that the respondent had with him at that time a boy whom he was offering to the witnesses. We are not prepared to differ from the learned Magistrate in his finding that the offence or at least part of it was committed in the presence of the Regimental Provost Sergeant. A further argument is that it has not been established that this member of the Military Police was authorised by the Commanding Officer to make complaints-under Section 236, Cantonments Act. We find that the Regimental Provost Sergeant, when he sent the respondent and the boy under arrest to the police, made a written

allegation that he held a warrant to arrest such people for loitering or soliciting for the purpose of prostitution. It does not appear that the defence either cross-examined this officer or produced any evidence to show that his allegation was, incorrect. We must presume in the absence of anything to the contrary that everything which was done was properly done and that the statement that the Regimental Provost Sergeant had authority was a correct statement.

6. There remains the question of fact whether the respondent was guilty or not. This was a question which the learned Sessions Judge did not consider. We might send the case back to him in order that he might consider it, but as this is a very small matter and the evidence is included only in the judgment of the learned Magistrate we think we can go-into the question for ourselves. We have given learned Counsel for the respondent: an opportunity to discuss the evidence and he has not said anything which would) lead us to suppose that the evidence is not true. There is no reason why the witnesses who are European soldiers should get up a false case against the respondent, and even if they had any reason for bearing a grudge against him it is extremely improbable that they would choose to satisfy their grudge by having recourse to a Court of law. We believe that the respondent did importune the witnesses to the commission of sexual immorality and we are satisfied that he-was guilty of the offence with which he was charged. The Local Government have appealed against the acquittal. We allow the appeal and find the respondent guilty. He has been sentenced by the learned Magistrate to rigorous imprisonment for a period of one month, the maximum sentence which can be passed. It is urged before us that his was a first offence or at any rate this was a first conviction, and that it would be preferable to substitute a sentence of fine for one of imprisonment. We are prepared to accede to this request made on behalf of the respondent. We therefore sentence him under Section 236(1), Cantonments Act, to a fine of Rs. 50 and direct that he shall, if he does not pay the fine, suffer rigorous imprisonment for a period of one week.