

Pushpa Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-16-2004

Reported in : 2004CriLJ4540

Judge : Amar Saran, J.

Acts : Immoral Traffic (Prevention) Act, 1956 - Sections 15, 16 and 17

Appeal No. : Crl. Misc. Appln. No. 4621 of 2004

Appellant : Pushpa

Respondent : State of U.P. and ors.

Advocate for Def. : S.L. Kesharwani, AGA

Advocate for Pet/Ap. : P.V. Singh, Adv.

Judgement :

ORDER

Amar Saran, J.

1. Heard Sri P.V. Singh, learned counsel for the applicant and Sri S.L. Kesharwani, learned A.G.A. for the State.

2. This application has been filed under Section 482, Cr. P.C. praying that Km. Pushpa, daughter of late Sri Ram Lal Sahu, original resident of Kasari Deeh,

Fokatpara, District Durg (Chattisgarh), M.P., who is detained in a Protective Home in Case No. 1156 of 2003 under Sections 15, 16 and 17(A) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as ITP Act), of Police Station Shahganj, district Agra, may be released in the charge of her mother or brother.

3. The case arose on the basis of a report furnished by the Rescue Officer, Jhansi Division, Jhansi dated 6-10-2003 to the City Magistrate, Agra, in which, he stated that Pushpa was detained in the brothel of Chandabai and Akila of P.S. Atmaddaula, district Agra. On that application the City Magistrate, Agra passed an order directing the Circle Officer, Lohamandi, district Agra to take action for rescuing Pushpa from the brothel. The C.O. in turn directed the S.H.O. of P.S. Shahganj to comply with the orders of superior officers and on 6-10-2003 at about 9.30 when Km. Pushpa was going on the road of Kothi Meena Bazar on a rickshaw with another person, she was apprehended and produced before the Magistrate. After recording the statement of Pushpa, the City Magistrate passed an order on 7-10-2003 presumably under Section 17(2) of the ITP Act, directing that an inquiry be made for ascertaining the age, antecedents and character of Pushpa, and the suitability of her parents or guardian to take charge of her, and the prospects of her rehabilitation. The Rescue Officer, Jhansi Division, Jhansi was directed to make the above-mentioned enquiry after visiting the home place of the applicant Pushpa and to submit a report before the Magistrate within fifteen days. In the meantime, the City Magistrate directed that Pushpa be detained in the Protective Home at Mathura. It appears that as the Protective Home at Mathura was overcrowded hence she was not granted admission at the Mathura Protective Home, but sent back to the Agra Protective Home. Her medical examination for ascertaining her age, presence of sexually transmitted diseases etc. was also directed to be conducted as required under Section 15(5A) of the ITP Act. This Medical Examination report of the office of the CMO, Agra showed that Pushpa was about 23 years old and was not suffering from any sexually transmitted disease. The Rescue Officer after visiting her home place submitted a report dated 3-11-2003, in which he mentioned that although Pushpa had tried to conceal her past background, but clarified that this may have been the result of fear from the relations of Akila. She appeared to have been lured away, by Chand Bai to Mumbai and was made to take part in the profession of singing and dancing. After

that Chand Bai brought her to the place of Akila wife of Babu Khan in Kuven Wali Galli, Etmadaullah, Agra. He further stated that there was contradiction in the depositions made by Pushpa before the Court and her confessions to the Superintendent of the Protective Home and the position as elicited from his visit to her home place. However after having been kept in the Rescue Home, she was free from fear and negative influences, and it was desirable that she may now be handed over to her mother and brothers, as she would have a dark future if she continued to reside any longer with Akila. However, it appears that after this report, the matter was placed in cold storage, for the subsequent SVI months, and only routine dates were given by the City Magistrate, and no further orders were passed.

4. The present application has been filed for quashing proceedings under Sections 15, 16 and 17 of the ITP Act and for release of Pushpa in the charge of her mother or brothers, because the Magistrates have completely slept over the matter and have failed to pass any further orders in her case.

5. On 18-6-2004 I passed an order for production of Pushpa before me on 16-7-2004 along with the records and other papers relating to her case. Consequently, she has been brought from the Shelter Home at Agra and produced before me today. Her mother Smt. Dukham Bai Sahu, wife of Late Ram Lal Sahu and brother Ashok Sahu have also appeared before me today. They say that after Pushpa's disappearance they had lodged a report, but were helpless for conducting any further probe in the matter. They were keen that Pushpa may now be released from detention at the Agra Protective Home and handed over in their charge. They would try to economically provide for her, and work for her rehabilitation and she could also work as a domestic help along with her mother. I have also examined the record of her case before the City Magistrate, Agra, which was produced before me.

6. It has first to be considered whether the action of detention of Pushpa in the Shelter Home at Agra after her apprehension when she was going on the road on a rickshaw was authorised under Section 16(1) of ITP Act. The said section provides for the removal of a person found in a brothel. It does not appear to give

any power to detain a person, at the time when she is moving around on a rickshaw, even if there are some suspicions that such a person may be involved in some immoral activity. Likewise Section 15 of the ITP Act also only applies to apprehension of person living in any premises after search of those premises without warrant. It also does not permit apprehending a person whilst she is travelling on a rickshaw. It also requires a special Police Officer or a trafficking Police Officer who are appointed by the State or Central Governments respectively under Section 13 of the ITP Act, to take a person into custody. The requirements of these provisions were also not met in Pushpa's case.

7. Be that as it may, Pushpa was produced before the City Magistrate presumably under Section 17(1) of ITP Act, who passed the initial order for keeping her in the Protective Home at Mathura and from where she had been transferred to the Protective Home at Agra as in the circumstances mentioned hereinabove. There appears to be some non-compliance with the requirements of this provision also, as the proviso to Section 17(3) provides that a person can be kept in custody for a maximum period of three weeks from the date of the order for an inquiry under Section 17(2) of the ITP Act. But Pushpa appears to have been kept in custody for almost 9 1/2 months and no final orders were passed for keeping her in the Protective Home or handing her over to any other appropriate custody.

8. It is also noteworthy that no prosecution has been launched against Pushpa under Section 7 or 8 of the ITP Act, on the charge of carrying on prostitution at a public place where prostitution is prohibited under Section 7(1)(a) or (b), or for seducing or soliciting in a public place, or public conveyance as interdicted under Section 8, hence her custody could also not be authorised under these provisions. Also the maximum period of detention for these offences extends to 3 months under Section 7(1)(a) and (b), and up to 6 months under Section 8 of the ITP Act. That would be considerably less than the period that Pushpa has already remained confined in the Protective Home.

9. Pushpa's medical examination report shows that Pushpa is about 23 years old, i.e. she is of the age of majority and capable of making her own decisions, and she is also not suffering from any sexually transmitted disease.

10. The Rescue Officer has also stated that no useful purpose would be served in keeping Pushpa any longer in the Protective Home, and it was desirable that she be handed over to the charge of her mother and brothers, who have expressed an interest in looking after her, and taking charge of her. This was the wish expressed by Pushpa too.

11. In view of all these circumstances I do not think that any purpose would be served by permitting the Magistrate to continue with the inquiry any further for deciding whether Pushpa should be kept in a Protective Home any longer.

12. The learned A.G.A. strongly contends that some bond may be taken from the girl or from her mother for her good conduct, and that she may not be allowed to lead an immoral life. However the learned AGA has not been able to point out any legal provision under which, such a bond may be taken in the peculiar facts of this case, in which as we have seen the pre-conditions for taking action under Sections 15, 16 and 17 were absent, as admittedly Pushpa was not recovered from a brothel, but was apprehended when she was freely moving around on a rickshaw. Furthermore, as the mother of Pushpa resides in Durg in M.P., it is not clear how feasible it would be for this Court to monitor the observance of any bond even if it is executed by Pushpa or her mother. This Court can only express a hope that she may not be exploited or enticed away for any immoral activity and that the concerned City Magistrate at Durg or other appropriate authorities at her place of residence will ensure that she is prevented from taking part in any immoral activities. Before parting with this case, it is being observed that when such a girl is produced in the Court of appropriate Magistrates, they will see in future that the mandate of law is followed and conduct the enquiry, if the pre-conditions exist for giving them jurisdiction to detain a person, and to make the concerned enquiries under Sections 15, 16, 17 and 17A of the ITP Act in a time bound manner according to the time schedule prescribed under the ITP Act, and not allow the enquiry to linger on unnecessarily for an inordinately long period of time, as has been done in this case.

13. The application, so far as it relates to the matter for release of Pushpa is being allowed and the proceedings in the case of Pushpa under Sections 15, 16 and 17

of the ITP Act pending before the City Magistrate, Agra are being quashed. The authorities, who have produced Pushpa before me today are directed to hand over Pushpa to the charge of her mother forthwith. It is hoped that she will look after her in an appropriate manner and she will also try to prevent from her being exploited or being made to participate in any immoral activities. The authorities are being directed to take back the record of her case to the concerned Court.

14. Having disposed of the matter of Pushpa, I think a direction needs to be issued to the City Magistrate at Mathura and Agra to produce a status report on all the inmates detained in the Women Protective Homes at Mathura and Agra. This status report should mention the name of the inmate, her age, whether the medical examination under Section 15(5A) of the ITP Act reveals any injuries due to sexual abuse, or the presence of any sexually transmitted disease. The date since when the inmate was detained in the home, the circumstances and reasons for her being detained, the legal provision under which she has been detained, and the status of the enquiry before the competent Magistrate. The Superintendents of the Protective Homes of Mathura and Agra or other senior officers authorised by them are directed to produce these status reports together with other relevant material concerning the inmates who are housed in the protective homes before me on 16-9-2004.

15. The Sessions Judges of Agra and Mathura who are the appellate authorities under the ITP Act, and who as Chairpersons of the District Legal Services Authorities are also enjoined to provide legal services to women in custody in a Protective Home under Section 12(g) of the Legal Services Authorities Act, 1987, are directed to ensure that there is no laxity on part of the concerned Magistrates in sending the required information to this Court. They should also see that the provisions of the ITP Act are observed by the Magistrates, and that they take action according to the provisions of law and observe the time schedule provided for different purposes under the ITP Act or other legal provisions. The Sessions Judges as Chairmen of the District Legal Services Authorities must proactively ensure that the inmates of the Protective Homes receive proper legal aid. The Sessions Judges must also get an enquiry conducted into the living conditions in the homes, as stories have appeared in the press of living conditions in the homes

being extremely poor and unhygienic, and there have been occasional reports of physical and sexual exploitation of inmates of some Protective Homes with the connivance of the staff of those homes. The enquiry must also throw light on the efficiency of the programme for education, training, rehabilitation and health care of the inmates, and whether there is any programme for arranging the marriages of the inmates, who are bereft of any outside support. Whether there are any provisions for entertainment of the girls in the homes, and is there any scope for outside visits, or are the inmates kept permanently confined in the homes. After getting the aforementioned enquiry conducted and outlining their proposed plan of action for ensuring compliance with the provisions of the ITP Act, and for providing legal services to the inmates of the Protective Homes, the reports of the Sessions Judges of Agra and Mathura, must reach this Court on or before 16-9-2004.

16. These specific directions for enquiring into the welfare of the women in the Protective Homes are being made because this Court finds that as in the present case, while action is hardly ever taken against the keepers of brothels and the pimps and other exploiters of the women, the women languish in Protective Homes for long periods of time in oppressive conditions thirsting for freedom. It is hardly unlikely that a trafficked woman may end up in a Protective Home by the collusion of the keepers of brothels, and pimps with some corrupt authorities, as that would throw her at their mercy and she would willingly succumb to their dictates, in a bid to secure her freedom, as there are no provisions for legal aid, and occasionally she has been abandoned by her family or they are too weak economically to give her any worthwhile support. The fact that the Mathura home was so over-full that Pushpa had to be sent back to the Agra home, and the inordinate over 9 1/2 months delay, even in which period the case of Pushpa was not dealt with by the Magistrate only underscores the suffering that such an exploited and trafficked woman, who is usually at the bottom of the economic ladder, must undergo. The office is directed to send a copy of the order forthwith to the Courts of City Magistrates, Mathura and Agra, and to the learned Sessions Judges of Agra and Mathura for compliance. List this case before me for further orders on 16-9-2004.

