

Kamla China Vs. State

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Court : Punjab and Haryana

Decided On : Mar-14-1961

Reported in : AIR1963P& H36; 1963CriLJ59

Judge : R.P. Khosla, J.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 20;
[Constitution of India](#) - Articles 14 and 19(1)

Appeal No. : Criminal Revn. No. 301-D of 1960

Appellant : Kamla China

Respondent : State

Advocate for Def. : Bishembar Dayal, Adv.

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

Disposition : Revision dismissed

Judgement :

ORDER

R.P. Khosla, J.

1. In this reference from Additional Sessions Judge, Delhi, among other things vires of Suppression of Immoral Traffic in Women and Girls Act, 1956 (No. 104 of

1956), hereinafter to be referred to as the Act, was challenged. The learned Additional Sessions Judge by his order dated the 5th of September, 1960, relying on some observations in Smt. Shama Bai v. State of Uttar Pradesh, AIR 1959 All 57, recommended that the impugned order of the trial Court dated the 18th of April, 1960, be quashed.

2. It is necessary to set out a few facts bearing on the points arising for decision.

3. Kamala China, a resident in the Light Building, G. B. Road, Delhi, was alleged to be a prostitute. She, in view of the provisions of Section 20 of the Act (Suppression of Immoral Traffic in Women and Girls Act, 1956) was given notice to show cause as to why she should not be directed to vacate her residence and be expelled from that locality. The learned Sub-Divisional Magistrate, Delhi, after examining the evidence produced in support of the prosecution and the respondent, ordered Kamala China to move herself from the Light Building, G. B. Road, Delhi, by 25th of April, 1960, and not to re-enter the locality known as G. B. Road without prior permission in writing from the Magistrate having jurisdiction in that area.

4. The said order of the learned Sub-Divisional Magistrate, Delhi, was challenged on two grounds, firstly, that the prosecution witnesses did not make out a case attracting the penal provisions of Section 20 of the Act and secondly, because Section 20 of the said Act was ultra vires of the [Constitution of India](#) inasmuch as it offended the provisions of Article 14 and Article 19(1), (d), (e) and (g).

5. Section 20 (3) of the Act requires that before that contemplated order is passed it must be found, firstly, that the woman or the girl in question is a prostitute, and secondly, that it was necessary in the interest of general public to expel her from the particular locality.

6. Evidence produced by the prosecution, which consists of disinterested and respectable persons, shows that both of the said requirements had been satisfied. Kamla China was properly proved to have been a prostitute and in the view that she was carrying on the ignoble profession of a prostitute in a place situated opposite a mosque and near a school it was considered necessary to the interest

of public to extern her from that locality. The order of the learned Magistrate dated the 18th April, 1960, could not, therefore, be assailed on these two grounds.

7. it remains, therefore, to decide whether the said order directed under Section 20 of the Suppression of Immoral Traffic in Women and Girls Act was not sound because it was repugnant to the constitutional rights guaranteed under Articles 14 and 19. Detailing the repugnancy it was pointed out by the learned counsel appearing in support of the petition that Section 20 was hit by Article 14 of the [Constitution of India](#) inasmuch as it has conferred unfettered powers on a Magistrate and that there was no reasonable basis of classification. As regards Article 19 it was urged that freedom of movement throughout the territory of India, to reside and settle in any part of the territory of India, and to practice any profession, or to carry on any occupation, trade or business, was jeopardised. In AIR 1959 All 57, Sahai, J., expressed the opinion that Section 20 of the Act should be struck down also because the expression 'necessary in the interests of the general public' was too vague, uncertain and elusive.

Reference to the terms of Section 20 of the said Act would show that the interest of the general public is not to be determined on any conjectural arbitrary grounds but on evidence led in the case. It could not, therefore, be held 'vague, uncertain and elusive'. The Magistrate has not been given any unrestricted powers. In each case he is to examine the evidence and has to come to a conclusion that the removal or ex-ternment of a particular prostitute from a particular locality was in the interest of general public. Section 20 of the Act could not, therefore, be hit by Article 14 of the Constitution.

The classification enjoined as per Section 20 is obviously to be determined as already observed on two-fold considerations, firstly, that the woman or the girl has been found to be a prostitute, and secondly, that it was in the interest of the general public to direct her removal from the locality in question. The classification could not thus be held arbitrary or unreasonable. The view enunciated seeks support from observations made in Gurbachan Singh v. State of Bombay, AIR 1952 SC 221. That was a case under Section 27 (1) of the City of Bombay Police Act which reads :-

'Whenever it shall appear to the Commissioner of Police,

(a) that the movements or acts of any person in the Greater Bombay are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, or

(b) the Commissioner of Police may, by an order in writing duly served on him direct such person to remove himself outside the State or to such place within the State and by such route and within such time as the Commissioner of Police, shall prescribe and not to enter the State or as The case may be the Greater Bombay.'

8. The Supreme Court repelled the plea that the said provisions were hit by Article 14 of the [Constitution of India](#).

9. The provisions of Section 20 now in question are in similar terms and there is a further safeguard that Magistrate's judicial decision as compared to the executive decision of the 'Com-issioner of Police' had to be arrived at on evidence. Section 20 could not, therefore, be held vitiated.

10. As respects the other constitutional ground raised, namely, that, the Section 20 of the Act offended Article 19(1), (d), (e) and (2) it would be noticeable that the restrictions were reasonable and in view of the provisos set out in Sub-clauses (5) and (6) of Article 19 could not be deemed repugnant. The movement or right to reside and settle is not restricted or interfered with, but restrictions are placed to channelise the same and that too in the interest of the general public. Section 20 of the Act could not, therefore, be struck down as being unconstitutional even on the last objection agitated.

11. For all these reasons this revision petition must fail. The reference is declined and the Criminal Revision No. 301-D of 1960 is dismissed. The result is that the order of the Sub-Divisional Magistrate dated the 18th of April, 1960, is affirmed.