

**State Vs. Bashir Ahmed and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/685992](http://sooperkanoon.com/685992)

**Court :** Delhi

**Decided On :** Apr-26-1983

**Reported in :** 23(1983)DLT486

**Judge :** M.L. Jain, J.

**Acts :** Suppression of Immoral Traffic in Women and Girls Act,1950 - Sections 8; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 162 and 258; [Evidence Act, 1872](#) - Sections 25

**Appeal No. :** Criminal Revision Appeal Nos. 299 and 323 of 1982 and Criminal Miscellaneous (Main) Appeal No. 70 of

**Appellant :** State

**Respondent :** Bashir Ahmed and ors.

**Advocate for Pet/Ap. :** S.T. Singh,; I.U. Khan,; A.K. Singh and;

**Judgement :**

**M.L. Jain, J.**

(1) This order will dispose of the following cases under the Suppression of Immoral Traffic in Women & Girls Act, 1956 (herein the Act):

(1) Cases under Section 8 of the Act in which proceedings against the accused were stopped under Section 258 Cr.P.G. and the respondent was discharged by the Metropolitan Magistrate and the State has come up in revision : Cr. R. 323/82 to 332/82. (2) Case under Section 8 of the Act in which the accused was discharged under Section 258 Cr. P.G. by the Metropolitan Magistrate. But the Addl. Sessions Judge in revision petitions Nos.61, and 65 to 69 of 1982, set aside the order and remitted the cases for trial. The accused have come in revision against the order of the learned Judge dated 24-11-1982 : Cr. M. (M) 70/83. (3) Case under Sections 3, 4, 5 and 7 of the Act in which the women were discharged under Section 258 Cr. P.G. and in respect of Bashir Ahmed the prosecution was directed to prefer a supplementary challan. The State has come in revision : Cr. R. 299/82.

(2) On receiving secret information that some women were standing near the stairs in the verandah of Kotha in the area of G.B. Road, Delhi, and were stopping passers-by and inviting them for sexual intercourse and some one was running a brothel, a 'vice-squad' was dispatched by the police to organise a trap. In the police party there were two constables in plain clothes. One of them was told to pass by the said verandah and if any woman approached to talk to him and solicit customer for sexual intercourse, he would talk to her and as and when the transaction was complete, he was to give signal by putting his hand on his head. The second constable was instructed to stay a little away from the first one so as to hear the conversation between the first constable and the woman. The accused is said to have stopped the first constable and asked him 'Babu Ji Shouk Farmana Hai'. The first constable asked as to what type of 'shouk'. She explained that she would charge some specified sum for the whole night and he would get good enjoyment by sexual intercourse. The first constable told her that he was a married man. But she persisted. This conversation was over heard by the second constable. The police party then apprehended her and after investigation, the case was challaned. The charge against the women was under Section 8 of the Act for seducing or soliciting for purpose of prostitution any person in any public place or within sight of, and in such manner as to be seen or heard from, any public place. This is the pattern of all the cases except the case in Cr. R. 299/82 to which a reference shall be made towards the end.

(3) The learned Magistrate held that the alleged solicitation amounted to a confession and cannot be used against the accused in view of Section 25 of the Indian [Evidence Act, 1872](#). therefore, he stopped the proceedings under Section 258 Gr. P.C. In some of them, the learned Addl. Sessions Judge in revision took the view that such a statement did not amount to confession. Hence, these, petitions by the State, except Gr. M. (M) 70/83 which is by the accused. Since the questions to be answered are common to all of them, hence, this single order.

(4) An objection is raised on behalf of the accused that the Magistrate's order amounted to an acquittal and no revision is maintainable in virtue of Sub-section (4) of Section 401 Gr. P.C. It was also pointed out that two such appeals and one revision have already been dismissed by this court. Section 258 Gr. P.G. provides that in a summons case, the Magistrate may stop the proceedings at any stage. If he so does after the evidence of the principal witnesses is recorded, it will be an order of acquittal; and in any other case, he may direct release of the accused and such release shall have the effect of discharge. In effect, therefore, the impugned order is an order of discharge and a revision is maintainable. Moreover, Sub-section (4) of Section 401 Cr. P.C. does not bar a suo motu exercise of revisional powers and the court can deal with such cases suo motu.

(5) Besides the counsel appearing for the State and the accused, I asked Shri I. U. Khan and Shri R. K. Naseem, Advocates to act as amices curiae. I have heard them. They have rendered considerable assistance in the decision of the questions under consideration. Since there is no decision as such of this court is available, they asked me to pronounce upon these amoral activities which are liable to be punished as immoral offences under the Act.

(6) Morals and law are not synonymous. As soon as law enters the sphere of morals, its construction and implementation both seem to be fraught with difficulties. One such law is this legislation relating to suppression of prostitution. Whatever be its origins and reason for its survival, be they biological, economical, social or psychological, prostitution is a practice as old as civilisation. It even came to be associated with devotion and dedication to gods, priests and temples. At one time courtesans carved for themselves an accepted niche in society nearing

respectability. Still later it came to be protected, licensed and regulated by law. In spite of puritan fervour it is difficult to totally eradicate this ancient practice unless the society guarantees to supply suitable employment and more rigorous its suppression is, more defiantly does it emerge overtly and covertly in other sophisticated forms. In general there is universal agreement that the practice of non marital sex as a profession is degrading to the dignity of mankind, of women in particular. In pursuance of ratification by India of the International Convention of the suppression of traffic in persons and of the exploitation of the prostitution by others, signed in New York in 1950 on May 9, the Act was enacted. One cannot fail to note that it primarily punishes miserable and helpless women who on account of circumstances are largely driven to live by this degrading trade. And one may pause to ask legitimately why not men except when he supplies her for the purpose be liable to punishment like her That is one reason why the provisions of the Act should be strictly construed against prosecution.

(7) Prostitution has been defined as follows :

'2.(f) 'prostitution' means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression 'prostitute' shall be construed accordingly.'

It was urged that what the Act seeks to do is not to stop the profession or trade of a prostitute altogether : *Shamt Bai and another v. State of Uttar Pradeah*, : AIR1959 All57 , and imposes reasonable restrictions on it. *Mc Malerkotla v. Mushtaq*, . What it seeks to prohibit is the act of a common prostitute and, therefore, a single act of offer cannot amount to an offer for purposes of promiscuous intercourse. Promiscuity in prostitution means indiscriminate bartering of sex favors without any emotional attachment and for monetary considerations. In *re Ratnamala and another*, : AIR1962 Mad31 , and *Bai Shanta v. State of Gujarat*, : AIR1967 Guj211 , it was pointed out that the purpose of the Act is not to render prostitution per se a criminal offence, but it is to inhibit or abolish commercialised vice as an organized means of living. So In *re Kamala*, Air 1966 Madras 312, it was held that merely to indulge in some flirtation with a

stranger, or to behave in such a way as to attract the attention of persons of the opposite sex, may be regrettable or immodest, but per se, it does not amount to any offence under the Act. It excludes a permanently kept concubine or a woman taken without paying any consideration. The entire scheme behind the Act is not the proof of a single incident of prostitution or of the activities of a prostitute. There must be indiscriminate sexuality requiring more than one customer : In re Deva kumar and others : (1972)1MLJ200 , and Bai Shanta (supra). In re Dhanalakshmi , it was observed that the phrase 'for purposes of prostitution' postulates plurality of instances of prostitution. A single instance would not suffice for the purpose of prostitution. But plural and indiscriminate sexuality can be inferred from the facts and surrounding circumstances of the case and it is not necessary that the evidence of more than one customer of the prostitute should be adduced, vide T. Jacob v. State of Kerala : AIR1971 Ker166 , and Kriahnamurthy @ Tailor Krishnan v. Public Prosecutor, Madras 1967 Cri. L.J. 544, and Deva kumar (supra). Promiscuity lies in an intentional indifference in the selection of parties as long as they pay. The relationship is usually marked by brevity and inside contempt for each other. Mere offer for such promiscuous sex, in or near a public place will be an offence under Section 8 of the Act. If the facts alleged could be proved, then certainly the act complained of was an act for purposes of prostitution in this case.

(8) What is then the evidence that prosecution has collected? It relies solely upon the statement of the accused themselves. Two questions in this regard have been raised, first whether what they did was in a public place and the second and more important one, whether the statements could be read in evidence against the accused.

(9) As to first, it was contended that the act did not constitute an offence because it was not committed in any public place. The verandah in front of the G B. Road shops is not a public place but private place as it belonged to the person to whom the shop belonged. That any portion of the running verandah of a market separated by individual notional lines is a private place, it is not possible to hold. Even otherwise, this argument cannot prevail because solicitation was being made within the sight of the public place or was made in a manner as to be seen from or heard on the road by any person walking in the verandah.

(10) As respects the second question, the learned Magistrate discarded the statements as confessions made to a police officer. Confession is not defined in the Evidence Act. But a 'confession' is not a statement by an accused 'suggesting the inference that he committed' the crime. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not in itself a confession. A confession must either admit in terms, the offence, or at any rate substantially all the facts which constitute the offence: *Pakala Narayana Swami v. Emperor* . Now, the - solicitation made by the accused to the police officer was not a confession made to him of an offence but was an offence committed in relation to a person who happened to be a police officer. Confession is always of past events. It cannot, therefore, be said that whatever was said by the accused to the police officer concerned was a confession, and inadmissible under Section 25 of the Evidence Act. But, it appears to me that the said statement of the accused having been made during investigation is excluded from evidence under Section 162 Cr. P.C. with reference to a trap laid by the Anti-Corruption police, it was held in *Maha Singh v. State (Delhi Admn.)*, : 1976 CriLJ346 , that where the Inspector recorded the complaint, arranged the raid by noting each step taken thereafter in a regular manner, later on forwarded the complaint for formal registration of the case under Section 154, Cr. P.C. at the Police Station, and whatever he did in order to detect the accused while taking the bribe, all that came within the term 'investigation' under Section 2(h) of the Code of Criminal Procedure because investigation had commenced on recording by him of the complainant's statement disclosing a cognisable offence. Investigation may start without information or without reducing the same in writing under Section 154 Cr. P.C.: *State of U.P. v. Bhagwant Kishore Joshi*, : 1964 CriLJ140 . In this case also, investigation was commenced when the police officer got the information and set the trap. The statement of the accused to the decoy police constable was, therefore, inadmissible under Section 162 Cr. P.C.

(11) The learned counsel defending the accused also attacked the employment of a police officer as a decoy. 'It cannot be too strongly emphasised that it is wholly wrong for a police officer or any other person to be sent to commit an offence in order that an offence by another person may be detected'. : *Bramnan v. Peek* (1947) 2 All E.R. 572, approved in *Kamalabai v. State of Maharashtra*, Air 1972 Sg

1189. I am in agreement with the criticism made in this regard. It is in the interest of the prosecution not to use a police officer as a decoy. These prosecutions have failed because of such use.

(12) Bashir and three women have been accused of offence under Sections 3, 4, 5 and 7(2) of the Act. Section 3 is for keeping the brothel or allowing the premises to be used as a brothel. Section 4 deals with an offence of living on the earnings of the prostitution of a woman or a girl or working as a tout or a pimp. Section 5 deals with offences or procuring, inducing a woman or a girl from place to place for the purpose of prostitution or for carrying on prostitution. Section 7(2) relates to a keeper of any public place and owner and occupier, etc. of any premises who permits such premises to be used for purposes of prostitution. The information against Bashir was that he has been keeping a brothel and he earns commission of Rs. 20.00 per girl. The police sent one of its constables in plain clothes with marked currency notes and another constable was posted to hear their talk. The constable stated that when he went to the Kotha, the accused came to him and asked if he wanted to enjoy. He had three girls to offer and that he will charge Rs. 20.00 . He will give Rs. 10.00 out of that to the girl. The girls were produced before him and they offered themselves for sexual intercourse. Thereupon the constable gave to him two notes of Rs. 10.00 each. From these facts, there is no doubt that Bashir had been inducing girls to take to prostitution, was running a brothel, and was living upon the earning of prostitution, and the girls were carrying on prostitution. But unfortunately the statements of the accused are hit by Section 162 Gr. P.C. and cannot be read in evidence. The girls have, therefore, been rightly acquitted. Bashir has not come up in revision. The State has. They are aggrieved - by the direction that they should file a separate challan against Bashir. But, for the reason of inadmissibility of evidence, this court should exercise its powers to direct that he shall also be discharged. I, therefore, direct: (a) petitions of the State are dismissed; (b) petition of the accused Cr.M.(M) 70/83 is accepted and the order of the learned Addl. Sessions Judge is set aside; and (c) the order of the Magistrate of 23-8-1982 qua Bashir is set aside. set aside and the Writ Petition filed in the High Court dismissed with costs.

