

T. Jacob Vs. State of Kerala

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Court : Kerala

Decided On : Aug-24-1970

Reported in : AIR1971Ker166; 1971CriLJ952

Judge : E.K. Moidu, J.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 2, 5(1), 7(1), 8 and 15(1)

Appeal No. : Criminal Revn. Petn. No. 267 of 1970

Appellant : T. Jacob

Respondent : State of Kerala

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : S. Easwara Iyer and; Thomas John, Advs.

Disposition : Petition allowed

Judgement :

ORDER

E.K. Moidu, J.

1. The revision petitioner is the 1st accused in C. C. 82/70 on the file of the Court of the District Magistrate (Judicial), Calicut. He has been charge-sheeted by the

Assistant Superintendent of Police, Kozhikode under Section 5(1)(d) and Section 7 (1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act 104 of 1956) which will hereafter be referred to as the Act The case against the revision petitioner and the 2nd accused, a woman, is that they were found carrying on prostitution in Boom No. 10 of the Beach Hotel, Calicut at about 2.30 A.M. on the night of 19-3-1970 when the Assistant Superintendent of Police made a surprise raid in the room accompanied by his constables and two witnesses cited as C. Ws. 1 and 2. They were alleged to be caught red-handed in the act of prostitution. When they went to the front side of the room, it was found locked from inside.

So, they went on the backside of the room, which was found open and entered into the room through the door, when they found the accused 1 and 2 lying in bed without clothes and carrying on prostitution. They got dressed up and light was put on in the room. The 2nd accused told the Assistant Superintendent of Police that she received Rs. 25/- towards hire charges for the night from the 1st accused. The Superintendent thereupon took into custody as many as 100 articles from out of the room belonging to the 1st accused. They consisted mostly of his personal belongings. A mahazar was prepared at the spot and the accused 1 and 2 were arrested. On the same day, he registered a crime and later a charge was laid against the accused before the District Magistrate.

2. When the case came up for hearing before the lower Court under Section 251A(1), Criminal P. C. the learned District Magistrate took into consideration the documents referred to in Section 173, Criminal P. C. and upon consideration of the documents and other circumstances came to the conclusion under Section 251A (3) that the charge had to be framed against accused 1 and 2. It is against that order that the present revision is filed by the 1st accused.

3. The learned counsel of the revision petitioner read through the entire statement recorded by the Assistant Superintendent of Police from four witnesses cited on the side of the prosecution. Those are the statements recorded under decision 162, Criminal P. C. during the investigation. The case of the prosecution is to be appreciated on the basis of the statements so recorded. The prosecution is not expected to go beyond that statement. Basing the entire case on the line of the

statement recorded, we have to consider whether the prosecution is able to make out a charge against the revision petitioner under Section 5 (1) (d) and Section 7 (1) of the Act referred to above.

4. The evidence of P. Ws. 1 and 2 was that they got into the Police van at the request of the Police and that along with the Police they also got into the room, when they saw accused 1 and 2 carrying on prostitution. C. W. 3, is a Rikshaw-puller. His evidence was that he used to take the 2nd accused to other lodges. But, his evidence was not conclusive to show that the 2nd accused had any occasion for previous prostitution. C. W. 4 did not implicate the accused 1 and 2 to any specific incident. A confession was alleged to have been made to the police by the 2nd accused that she received Rs. 25/- from the revision petitioner. This in short is the evidence of the prosecution.

5. In this regard, we have to consider whether the prosecution on the basis of the statement referred to above of these witnesses has made out any case against the revision petitioner. There is no evidence that prior to the incident either the revision petitioner or the 2nd accused had any occasion to meet and carry on prostitution. Neither was there any evidence that the 2nd accused had been in the habit of conducting prostitution in indiscriminate manner. The word 'prostitute' as defined in Section 2 (e) means the female who offers her body for promiscuous sexual intercourse for hire, whether in money or kind.

'Prostitution,' is defined in Section 2 (f) as 'prostitution means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind.' The offence which requires to be punished under Section 7 (1) is the indiscriminate sexuality which has to be proved by the prosecution. Indiscriminate sexuality sought to be proved on identical evidence was negated in a decision reported in *In re Ratnamala*. AIR 1962 Mad 31. where it was held that the word 'promiscuous' used in the definition of the word 'prostitute' in Section 2 (e) of the Act implies 'indiscriminate' but this plural and indiscriminate sexuality will be a matter of inference from the facts, and it is not necessary that the evidence of more than one customer of the prostitute should be adduced.

But, the Gujarat High Court took a different view in *Bai Shanta v. State of Gujarat*, 1967 Cr LJ 1140 = (AIR 1967 Guj 211). where it is held that having regard to the use of the words 'carrying on prostitution', suggestive of more than a solitary instance of prostitution is clear that there must be indiscriminate sexuality requiring of more than one customer of the prostitute before she can be held guilty under Section 7 (1) of the Act. A similar view has been taken by the Kerala High Court in a decision reported in *State of Kerala v. Pathumma*. 1968 Ker LT 453 - (1969 Cri LJ 697), where Sadasivan J., held that mere accidental detection in a room in a rest house is not sufficient circumstance or evidence to hold that a person concerned had been indulging in sexual intercourse for money indiscriminately; a conviction could be sustained on evidence that the person concerned had been indulging in sexual intercourse for money indiscriminately.

Such an evidence is lacking in this case. Prostitution in itself is not an offence under the Act save in the manner; given in Section 7 or Section 8. None of the witnesses cited on the prosecution side had given evidence that the 2nd accused had been indiscriminately carrying on intercourse for money at any time previous to the occurrence. Woman must be proved to have offered her body for promiscuous sexual prostitution for hire. So the word 'promiscuous' occurring in the section means indiscriminate prostitution to which Section 7 (1) refers, which has therefore, reference to some kind of a commercialised vice such as the activity in a brothel. In the light of the above conclusions, I am of the opinion that the prosecution has failed to make out an offence against the revision petitioner under Section 7 (1) of the Act

6. It is then contended that the offence against the revision petitioner might fall under Section 5 (1) (d). There again, it is necessary that the revision petitioner should have caused or induced the 2nd accused to carry on prostitution. From the evidence on record, such an inference cannot be drawn. As a matter of fact, there was nothing to show that the revision petitioner was in any way connected with the 2nd accused prior to the incident. No witness on the prosecution side has come forward to state any previous conduct on the part of the revision petitioner. Without any such evidence, it cannot be said that he would have caused or induced the 2nd accused to carry on prostitution. To carry on prostitution, as I have already

stated, is suggestive of more than a solitary instance of prostitution, which means that there must be indiscriminate sexuality requiring of more than one customer of the prostitute before she can be held guilty.

In that way, it has to be stated in the light of the evidence in the case that the revision petitioner would not have any hand in the conduct with the 2nd accused now or at any time previous to the incident, in the absence of any such evidence, the prosecution cannot invoke the provision of Section 5 (1) (d) to implicate the revision petitioner to a charge under that section. The evidence recorded in the case does not justify a charge either under Section 5 (1) (d) or under Section 7 (1). No useful purpose will be served in sending back the case to the lower Court for trial. I find, therefore that no prima facie case has been made out against the revision petitioner. He has, therefore, to be discharged under Section 251-A (2), Criminal P. C.

7. Before parting with the case, I like to point out that the Assistant Superintendent of Police, who conducted the raid in the instant case, was not justified in doing so without complying with the provisions of Section 15 (1) of the above Act. There was no ground stated in the charge or anywhere else why he did not call at least one woman witness of the locality to attend and witness the search. It is a mandatory provision. See the view expressed in *Harnam Singh v. State*, AIR 1964 Punj 436 at P. 437. Even apart from that, the conduct of the Police Officer in proceeding into the bed room of the revision petitioner and entering through the back door without the civility of a knock on the front door, which was locked inside or warning the revision petitioner for the intrusion would be a misuse of his powers in the instant case.

Anyway, the Police Officer at least could have knocked at the front door and got it opened. The place of occurrence is a Room No. 10 of the Beach Hotel, Calicut, which is a reputable hotel in the locality. It is very strange that the Police should have gone to such a hotel and conducted a raid of this type and brought down the prestige of the hotel in the estimate of the public without any regard for decency or decorum. It is also surprising that the Police Officer had taken into custody all the moveables including the personal belongings under a mahazar. One of the articles

was the button hole pin inscribed with 'Rotary International', which has nothing to do with the commission of the crime.

It would be seen that every article, whether belonged to him or not had been removed out of the room. There was absolutely no necessity for removal of all these articles unless they were required for the proof of the crime. Anyway, the charge having been found against I do not propose to take any further action in the matter.

8. In the result, the revision petition is allowed. The revision petitioner is disgraced under Section 251-A (2), Criminal P. C. The moveables recovered from the revision petitioner will be handed over to him immediately.

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