

Cherivan Vs. State

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Court : Kerala

Decided On : Nov-09-1972

Reported in : 1973CriLJ839

Judge : V. Khalid, J.

Appellant : Cherivan

Respondent : State

Judgement :

ORDER

V. Khalid, J.

1. One of the four accused in C.C. No. 34 of 1972 on the file of the District Magistrate's Court. Ernakulam charged for an offence punishable under Section 5(1)(a) of the Suppression of Immoral Traffic in Women and Girls Act 1956, hereinafter referred to as the Act. has filed this revision against the order framing charge against him.

2. The Petitioner and the other accused are Government servants. The accusation against him is that on 14.12.1970 he along with the three other accused took one Santhamma from Thodupuzha to the Woodlands Hotel at Wellington Island for the purpose of prostitution¹. It is said that room Nos. 42 and 46 in the hotel were reserved in the name of one of the accused by name Madhavan Nair. On a

perusal of the Papers under Section 173, Cr.P.C. the learned District Magistrate found a prima facie case and framed charge.

3. The main contention of the learned Counsel for the petitioner is that the only material available in this case to frame charge is the statement of the woman Santhamma. According to him her statement by itself will not be sufficient to make out the ingredients of the offence. I am extracting below the important around mentioned in the petition:

To bring out an offence under Section 5(1) the accused should procure the girl for not his use but for the use of others. This is also absent in the charge. There is no evidence to bring out the elements of prostitution which is also a necessary ingredient of the section.

4. For a proper understanding of the points involved. I am extracting below Section 5(1) of the Act:

(1) Any person who-

(a) Procures or attempts to procure a woman or girl, whether with or without her consent; for the purpose of prostitution: or

(b) induces a woman or girl to go from any place, with the intent that she may for the purpose of prostitution become the inmate of or frequent. a brothel; or

(c) takes or attempts to take a woman or girl, or causes a woman or girl to be taken, from one place to another with a view to her carrying on, or being brought up to carry on prostitution: or

(d) causes or induces a woman or girl to carry on Prostitution:

Shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees.

The statement of the woman is that she was taken from her residence to the 'Woodlands Hotel' at Wellington Island. She is married and has two children. Her

husband deserted her and therefore she was forced to live in prostitution. When the police went to the hotel, one of the accused, Madhavan Nair, was seen with the woman in one room and the other accused including the petitioner were in the adjoining room. The accused Madhavan Nair and the woman were found in a compromising situation and it is said that the woman had on her person an amount of Rs. 35/.

5. The fact that the lady was taken for 'prostitution' cannot be disputed at this stage. There were four persons in all. She lives in prostitution and she went there to offer her body for promiscuous sexual intercourse for hire. The only other question which survives for consideration is whether the woman was procured for prostitution the contention being that the word 'procure' connotes that somebody other than the accused should procure her for them. Section 5(i)(a) of the Act can be invoked only against a procurer like a primo and not against persons like the petitioner in this case who took her for his own sexual purpose. It is therefore necessary to consider the actual scope of the word 'procure' for this purpose.

6. The word 'procure' has different shades of meaning. In the Chamber's Twentieth Century Dictionary, at page 733, the following meanings are given:

To obtain for one's self or for another; To brine about; to attract; to urge earnestly; to pander, pimp.

In the Concise Oxford Dictionary of Current English. Fourth Edition, at page 936. the meanings given for the word 'procure' are: 'obtain by care or effort; acquire; brine about.' In the Random House Dictionary of the English Language (unabridged edition) at page 1147, the meanings given are:

1. to obtain, or get by care, effort, or the use of special means; to procure evidence.
2. to brine about, esp. by unscrupulous and indirect means; to procure secret documents.
3. to obtain (women or girls) for the purpose of prostitution.

4. to act as a procurer or pimp.

In the Oxford (Pocket) Dictionary, the meaning of the word 'procure' is, 'to succeed in getting (for another or with double object, for or for oneself; lease procure me a copy; will procure it for you; must try to procure one), to brine about or cause by other's agency: be a procurer or procuress'. In the same Dictionary, the word 'procreation' is said to mean, 'actins as another's agent, authority to do this.' In the Webster's Seventh New Collegiate Dictionary, the meanings given for the word 'procure' are 'to take care of; to act possession of; obtain, to get and make available for promiscuous sexual intercourse; to brine about; achieve; to procure women.' In the Readers' Digest Great Encyclopedic Dictionary, 'procure' means 'obtain by care or effort; acquire; act as procurer or procuress;' and 'procurer' means men or women who procure women for gratification of another's lust'. In the New English Dictionary, Vol. VII Part II. Page 1418, the word 'procure' means, 'to obtain (woman) for gratification of lust'.

7. From the book 'Words and Phrases Legally denned' II Edition, Vol. IV. at pages 186-187, by John B Saunders the following extracts will also be useful for the purpose of understanding the real import of the word 'procure' 'Sexual Offences:

(Section 11 of the Criminal Law Amendment Act 1885 (repealed; see now Sexual Offences Act 1956, Section 13) enacted that any male person who, in public or private, committed, or was a party to the commission of. or 'procured' or attempted to procure the commission of, any act of gross indecency with another male person, should be guilty of misdemeanor). 'It is said that because the Act uses the expression 'another male person' that person cannot be the person who procures the commission of the offence, but must be some third person. That does not seem to me to be the proper construction of the section. I think that the person who procures the commission of the offence may himself be the person with whom it is committed'. R. v. Jones (1896) 1 Q.B. 4. C.C.R., per Lord Russell of Killowen, C.U., at P. 6.

Australia: 'There is very little reported authority on what is necessary to constitute a procuring (within Section 91A of the Crimes Act 1900 (N.S.W.) Such as there is suggests that some element of persuasion or inducement or influencing is

essential.... This accords with the meaning in general of the word 'procure.' which imports effort, care, management or contrivance towards the obtaining of a desired end; and this, too, is involved in the performance of the functions of a 'procurer' or 'pander'. 'R. v. Castielione (1963) N.S.W.R. 1, per Sugerman. J., at pp. 6, 7.

New Zealand; Under Section 149 of the Crimes Act. 1961 it is an offence for gain or reward to agree to 'procure' a woman to have intercourse with a male person other than her husband). 'In our opinion it is Plain that the word 'procures' is used in its ordinary meaning, namely, 'obtains, arranges, or acres to supply.' all of which are meanings to be found in dictionaries where the phrase 'Procures a woman' is involved.' R. v. Johnson (1963) N.Z.L.R. 92, per Cur. at p. 94.

8. The various meanings extracted above would indicate that the word 'procure' means not only procuring for others but procuring for oneself. If that be so, the offence under Section 5(1)(a) of the Act for the purpose of framing a charge can be said to have been made out.

9. It is true that in finding out the actual meaning of a word used in a statute, it is not always safe to take its literal meaning from the dictionary. But it cannot be said as a rule that the literal meaning cannot afford any assistance to find out the exact meaning which the Legislature intended. The very words in which the Legislature has expressed itself is the literal scripts and constitutes the law itself. Both the letter of the law and the spirit of the enactment have to be looked into in construing a particular section. In interpreting the law and trying to ascertain the intention of the Legislature through the medium of the words in which it has expressed itself. Courts employ both literal and free interpretation, In the former case, the Courts look into the verbal expression of the law. The free interpretation, on the other hand, is the one by which the Court departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the Legislature. In this case, however, this is not necessary. From the words used, the intention of the Legislature is abundantly clear. If it is possible to ascertain the spirit of the law from the words used, then it is enough if a proper construction of the section in its literal sense is adopted. As has been often said, 'the meaning of a word has to be judged by the company it keeps.' Here the words 'women' or 'girl'

and 'prostitution' are used. Prostitution has been defined in the Act as 'the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind.' If in enacting Section 5(1)(a), the Legislature meant only persons who procure girls or women for the purpose of others, then the Legislature would have made its intention clearer by using proper words for it, for, it is well-known that the Legislature should not and do not shy at repetitions. From the meanings given above, I hold that the word 'procure' takes in not only persons who procure women for others but persons who procure women for themselves.

10. Being a matter of current interest I think it will not be out of place to express my views on the painful and harrowing tale that Santhamma unfolds in this case. She affords the best illustration of how a woman happily married with two children has been driven to sell herself for her sustenance and that of her children, thanks to the neglect by her husband. The pain of her husband's neglect perhaps rankles in her breast. She has to look after her children, feed them, educate them and clothe them. They are without the paternal care. Hence, she had to choose between a life of penury poverty and starvation on the one hand and the life of comparative ease on the other. She chose the latter and the price she had to pay was the mortgagee of her chastity. To start with, she was perhaps lured into submission for easy money by some unscrupulous man. The dike once breached there was no return and to-day she has no qualms in declaring openly to the police that she lives in prostitution. Young divorcees, neglected wives and young widows fall easy prey to the advances made by their 'protectors'. I hope that the Government and social reformers will strike at this source. I do not know whether the evil can be completely eradicated in a vast country like ours, although according to Edgar Snow, Red China has succeeded in rehabilitating her fallen women which, if true, is a remarkable achievement. The whole timers and the professionals may not readily agree to eave up the gilded cage of their profession for the daily grind of a more respectable but arduous career. What should be attempted is to reform the part-timers, the drifters, the amateurs and other unfortunate women who slip to inflame and disrepute by accidental Circumstances.

11. The Act In question was enacted in pursuance of the International Convention signed at New York on the 9th May, 1950, the purpose being to inhibit or abolish commercialized vice, namely, traffic in women and girls for the purpose of prostitution as an organized means of living. The idea was not to render prostitution per se a criminal offence or to Penalize individual prostitution.

12. Opinions are not uniform in this regard. There are those who point to the failure of the law to check this social evil that has existed since the dawn of civilization. There are others who argue with Lucky who 'speaks of prostitutes as safeguards of the sanctity of the home and of the innocence of our wives and daughters'. There are yet others who argue with Bertrand Rustle that 'society therefore sets apart a certain class of women for the satisfaction of those masculine needs which it is ashamed to acknowledge yet afraid to leave wholly unsatisfied.' Those who advocate for permissiveness and sexual liberation of women agree with Russel that 'those who oppose the new freedom should face frankly the fact that they are in effect advocating the continuance of prostitution as the sole safety valve against the pressure of an impossibly rigid code.' (Marriage and Morals by Bertrand Russel).

13. Permissive sex or sexual liberation of women is something foreign to the Indian concept of womanhood though there are a sizable few even in our country who hold the view that permissive sex does not breed Prostitution, it reduces its incidence. Rehabilitation of the fallen women can only be through social reform. Social reform is impossible except thro' economic emancipation. The basic problem here, as in many other cases, is economic.

14. Now coming back to the case. I hold that the order framing charge cannot be said to be wrong is too premature to decide about the guilt or otherwise of the accused.