

Suraj and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Nov-28-1980

Reported in : 1980WLN567

Judge : Kalyan Dutta Sharma, J.

Appeal No. : S.B. Criminal No. 85 of 1977

Appellant : Suraj and ors.

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. M.M. Singhvi

Disposition : Petition allowed

Judgement :

Kalyan Dutta Sharma, J.

1. This revision-petition filed by Smt. Suraj, Smt. Hari Bai and Smt. Satti is directed against an order dated March 30, 1977 passed by the Chief Judicial Magistrate, Jaisalmer, under Section 20 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, here-in-after referred to as the Act. The learned Chief Judicial Magistrate, Jaisalmer, directed the petitioners to remove themselves from the municipal limits of Jaisalmer town and further prohibited their re-entry in the aforesaid area without the permission in writing of the Magistrate having

jurisdiction over such place.

2. The relevant facts giving rise to this revision-petition may be briefly stated as follows: On September 27, 1977, the Chief Judicial Magistrate, Jaisalmer, received an information that four girls, namely, Mumal, Suraj, Hari Bai and Satti residing in Jagri Pada in the town of Jaisalmer within the local limits of his jurisdiction were prostitutes and were offering their bodies for promiscuous sexual intercourse for hire in money and were earning their livelihood in this manner. Upon receiving this information by the Station House Officer, police station, Jaisalmer the Chief Judicial Magistrate issued summonses to the petitioners and Mst. Mumal to present themselves before him and to answer the charges under Section 3(1) and 3 read with Section 7 of the Act, which were made against them by the Station House Officer. It appears from the record that the three petitioners and Mumal put in their appearance in the court of the Chief Judicial Magistrate, Jaisalmer, in response to the summonses and denied all the allegations made against them by the police. The Chief Judicial Magistrate then recorded the evidence produced by the police and examined the four girls and recorded the statements of witnesses which they produced in their defence. Upon scrutiny of the evidence brought on the record, the Chief Judicial Magistrate came to a conclusion that no case is made out against Mumal under Section 20 of the Act and so he dropped proceedings against Mumal and passed the impugned order under Section 20 of the Act against the three petitioners, requiring them to remove themselves from the Municipal limits of Jaisalmer and further prohibiting them from re-entering that area. Aggrieved by this order, the petitioners have come-up to this Court in revision.

3. I have carefully gone through the record and heard Mr. M.M. Singhvi, learned Counsel for the petitioners, and Mr. M.D. Purohit, Public Prosecutor, for the State. Mr. M.M. Singhvi, learned Counsel for the petitioners has challenged the order of the Chief Judicial Magistrate on the following amongst other grounds:

1) that the Chief Judicial Magistrate committed an error in proceeding under Section 20 of the Act because the petitioners were not called upon to appear before him and to show cause why they should not be required to remove themselves from

the municipal limits of Jaisalmer and be prohibited from re-entering that area;

2) that there was no material, available on the record to prove that the petitioners indulged in prostitution;

3) that the order passed by the Chief Judicial Magistrate is bad because it simply directed the petitioners to remove themselves from their premises and prohibited them from re-entering the said premises without specifying the place they would go and by what route;

4) that the proceedings under Section 20 of the Act were resorted to before prosecuting the petitioners under Section 3 and 7 of the Act which offences were alleged to have been committed by the petitioners.

In support of his above contentions Mr. M.M. Singhvi relied upon the following authorities:

1971 Weekly Law Notes Part I Page 646, Mohanlal v. State of Rajasthan : AIR1969 Cal544 Shefali Banerjee v. The state and : 1968 CriLJ82 Sub-Divisional Magistrate, Delhi v. Ram Kali. Mr. M.D. Purohit, on the other hand, contended that the petitioners are prostitutes and are earning their livelihood by offering their bodies for promiscuous sexual intercourse for hire in money and so the Chief Judicial Magistrate on receiving such information rightly proceeded against them under Section 20 of the Act. It was further argued that the Chief Judicial Magistrate enquired into the truth of the information received by him from the Station House Officer, Jaisalmer, and after giving the petitioners an opportunity of adducing evidence came to the conclusion that they were prostitutes and it was necessary in the interest of general public that they should be required to remove themselves from the municipal limits of Jaisalmer and be prohibited from re-entering the same, In short, he supported the impugned order passed by the Chief Judicial Magistrate, Jaisalmer, because according to him, it does not suffer from any infirmity pointed out by Mr. M.M. Singhvi, learned Counsel for the petitioners.

4. I have given my earnest consideration to the rival contentions. It is undoubtedly true that the petitioners were served with summons to appear in the court of the

Chief Judicial Magistrate, Jaisalmer, on October 22, 1975 and to answer the charges levelled against them under Section 3(1) and Section 3 read with Section 7 of the Act. No notice was given to them by the Chief Judicial Magistrate to appear before him and to show cause why they should not be required to remove themselves from the municipal limits of Jaisalmer and be prohibited from re-entering such limits. The summons issued to the petitioners by the Chief Judicial Magistrate did not require them to show cause why they should not be directed to remove themselves from limits of municipal area and be prohibited from re-entering such area. The summons, therefore, does not comply with the requirements of Section 20 of the Act. Section 20 reads as follows:

20. Removal of prostitute from any place.-(1) A Magistrate on receiving information that any woman or girl residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such woman or girl requiring her to appear before the Magistrate and show cause why she should not be required to remove herself from the place and be prohibited from re-entering it.

(2) Every notice issued under Sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the woman or girl against whom the notice is issued.

(3) The Magistrate shall, after the service of the notice referred to in Sub-section (2) proceed to inquire into the truth of the information received, and after giving the woman or girl an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such woman or girl is a prostitute and that it is necessary in the interests of the general public that such woman or girl should be required to remove herself therefrom and be prohibited from re-entering the same, the Magistrate shall, by order in writing communicated to the woman or girl in the manner specified therein, require her after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove herself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order, and also prohibit her from re-entering the place without

the permission in writing of the Magistrate having jurisdiction over such place.

(4) Whoever-

(a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting her from re-entering a place without permission is in force, re-enters the place without such permission, or

(b) knowing that any woman or girl has, under this section, been required to remove herself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such woman or girl in the place, shall be punishable with fine which may extend to two hundred rupees and in the cases of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first, during which she or he has persisted in the offence.

In these circumstances, the contention of Mr. M.D. Purohit that the petitioners were served with summonses and, therefore, the proceedings are not illegal, cannot be sustained. Absence of notice under Section 20 of the Act, in my opinion, cannot lend validity to the proceedings initiated by the Chief Judicial Magistrate requiring the petitioners to remove themselves from the limits of the municipal area and to prohibit them from re-entering that place, because Sub-section (3) of Section 20 clearly lays down that the Magistrate shall, after the service of the notice referred to in Sub-section (2) thereof, proceed to enquire into the truth of the information received. As no such notice as referred to in Sub-section (2) of Section 20 of the Act has been given to the petitioners by the Chief Judicial Magistrate, his subsequent impugned order requiring them to remove themselves from the limits of municipal area, Jaisalmer and to prohibit them from re-entering such area cannot be declared legal. The mandate of Section 20(1) of the Act is unambiguous and mandatory and breach thereof renders subsequent proceedings illegal.

5. The other contentions put forward before me by the learned Counsel for the petitioners is that the impugned order passed by the learned Chief Judicial Magistrate, Jaisalmer, is illegal for other reasons also. One of the reasons is that the learned Chief Judicial Magistrate required the petitioners to remove themselves from the area covered by the municipal limits of Jaisalmer and further

prohibited them from re-entering it but did not specify the place where they would go from Jaisalmer and by what route. In support of his above contention, he invited my attention to the words 'to remove herself from the place to such place whether within or without the legal limits of his jurisdiction by such route or routes and within such time as may be specified in the order,' used in Sub-section (3) of Section 20 of the Act and contended on their strength that in the absence of such specification the impugned order passed by the Chief Judicial Magistrate became bad in law.

6. I have considered the above contention and found it tenable. The words 'to remove herself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order' clearly mean that the learned Magistrate while passing an order under Sub-section (3) of Section 20 will not only require the woman to remove herself from the place where she was living but shall also specify the place where she will have to go and by what route. The object in enacting this provision appears to be that a woman should not be thrown on the street or be thrown out from the jurisdiction of the Magistrate to another Magistrate's jurisdiction to be similarly kicked out. A similar view has been expressed by the Calcutta High Court in *Shefali Banerjee v. State* : 1968 CriLJ82 , wherein it was held that by framing this Act the intention of the legislature is not to make a woman indulging in prostitution at a particular place a destitute without a shelter home, because if she is directed to remove herself from one place where she is residing and indulging in prostitution without specifying another place where she will go and by what route, there is every likelihood that she will be kicked from one place to another by different Magistrates, with the result that she will be made a destitute without any shelter. The Chief Judicial Magistrate, Jaisalmer, failed to consider this aspect of the matter while passing the impugned order under Sub-section (3) of Section 20 of the Act. So on this ground also his order is liable to be set aside.

7. As the impugned order passed by the Chief Judicial Magistrate is bad in law on the grounds mentioned above, I need not go into the merits of the case with a view to ascertaining whether there was any material on the record to find that the petitioners indulged in prostitution. Likewise, the question whether the Chief

Judicial Magistrate was bound to proceed against the petitioners under Sections 3 and 7 of the Act before making an order under Section 20 of the Act need not be gone into or dealt with in this case as the impugned order passed by the Chief Judicial Magistrate is wholly illegal for the reasons mentioned above.

8. Consequently, the revision-petition filed by the petitioners is allowed and the impugned order passed by the Chief Judicial Magistrate, Jaisalmer, in this case is set aside.

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