

**In Re : Kamala**

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**SooperKanoon Citation : [sooperkanoon.com/806530](http://sooperkanoon.com/806530)**

**Court : Chennai**

**Decided On : Dec-03-1965**

**Reported in : 1966CriLJ1021**

**Judge : Anantanarayanan, J.**

**Appellant : In Re : Kamala**

**Judgement :**

**ORDER**

**Anantanarayanan, J.**

1. This revision proceeding involves the interesting question, whether an accused can be convicted under Section 8(b) of the Suppression of Immoral Traffic in Women and Girls Act (Central Act 104 of 1956), in the absence of the testimony of the person who was solicited for prostitution by the accused. Section 8(b) of the Act runs as follows:

Whoever in any public place.... (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution.

2. In the present case, admittedly, the only evidence on the record with regard to the gravamen of this charge is that of the Deputy Superintendent of Police (P.W.

1), who made the arrest. He states that on 1.10.1963 at 10 p.m. he found the revision petitioner (Kamala) 'gaudily dressed, bedecked with flowers, and behaving in an indecent manner as to offend against public decency, by giggling and making gestures with her hands'. He goes on to add that she was talking to one Sandhu Mohammad, whose address is given, and soliciting that person for purposes of prostitution at a public place. In cross-examination, the officer conceded that he could not swear to the words used by the revision petitioner in conversation with this Sandhu Mohammad. The evidence shows that he was at a distance of 10 to 15 feet, and his statement that the revision petitioner was soliciting Sandhu Mohammad for purposes of prostitution, seems to be a mere inference from the general situation, and from her conduct. Admittedly, Sandhu Mohammad was not examined, and there is no, legal evidence about the words used by the revision petitioner to Sandhu Mohammad.

3. Under the circumstances, it seems to me to be very clear that the ingredients of the offence denoted in Section 8(b) of the Act were not established. I shall first deal with the aspect relating to any possible annoyance caused by the revision petitioner to persons then present, or to any offence against public decency. In order to show that any such element was present, there must be the evidence of the persons annoyed by the conduct of the revision petitioner, or evidence that her conduct was such as to offend public decency. No doubt, such evidence could be even that of the officer alone, but it must be explicit and unambiguous. It may be very regrettable that a woman dressed gaudily, bedecks herself with flowers, and generally behaves in an undignified manner by giggling and making gestures in a public place. That may be very bad example of modesty set to others, but it is a far distance between such a socially regrettable conduct and the offence rendered liable to be punished under Section 8(b) of the Act. In my view the evidence is totally inadequate to justify conviction on the ground that the conduct of the revision petitioner caused obstruction or annoyance to persons residing nearby or passing by such a public place, or that it was likely to offend public decency. We are left with the other element, namely, whether the revision petitioner did solicit for purposes of prostitution, the person referred to in the evidence, namely, Sandhu Mohammad.

4. The Act itself has not defined the word 'solicits'; Section 8(a) which is a different offence, refers to the temptation of a person, or to attracting a person for the purpose of prostitution. Presumably, the word 'solicits' conveys something more, and has the essential import of an oral entreaty or persuasion, used to achieve the object of prostitution. In 'Words and Phrases', Permanent Edition, Volume 39 at page 614, I find a comprehensive commentary on the expression 'solicits'. The most satisfactory definition that I can discover seems to be this: 'to importune, entreat, implore, ask, attempt, try to obtain'. It seems to me to be self-evident that where this takes the form of an oral pleading or request addressed to a person, either that person must give testimony on the point, or we should have the specific evidence of some one who overheard the words used. But that is precisely what is lacking in the present case. Sandhu Mohammad has not been examined, and we do not have the evidence of any other pedestrian who was there at that moment, and who overheard the conversation. The Deputy Superintendent of Police (P.W. 1) was some feet away, and he is quite unable to tell us what was the conversation between Sandhu Mohammad and the revision petitioner, and what were the words used by her. Again, those words must contain the definite import of a solicitation for prostitution. 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, as I stressed earlier, be regrettable or immodest, but per se, it does not amount to any offence under Section 8(b) of the Act. The learned Public Prosecutor conceded, with fairness, that the evidence on record is insufficient to bring out the essential ingredients of Section 8(b). Since the existence of such ingredients must be strictly proved, before the conviction can be sustained, I allow the revision and set aside the conviction of the revision petitioner in this case. The fine, if paid, will be refunded.