

Kambho Bera Vs. Emperor

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Court : Kolkata

Decided On : Nov-18-1927

Reported in : AIR1928Cal381

Appellant : Kambho Bera

Respondent : Emperor

Judgement :

Graham, J.

1. This is an appeal by one Kambhoo Bera, who has been convicted by Mr. J.D. Tyson, formerly Chief Presidency Magistrate of Calcutta, under Section 6 of the Calcutta Suppression of Immoral Traffic Act (Bengal Act 13 of 1923), and sentenced to six months' rigorous imprisonment, and to pay a fine of Rs. 1,000, with an additional terms of six months' rigorous imprisonment in the event of default to pay the fine. The case is stated to be the first of its kind and keenly contested before the Magistrate. The section in question reads as follows:

6(1) Any male person, who knowingly lives, wholly or in part, on the earnings of prostitution, shall be punished with imprisonment, which may extend to three years, or with whipping, or with both of those punishments, and shall also be liable to a fine which may extend to one thousand rupees.

(2) Where a male person is proved : (i) to be; living with, or to be habitually in the company of a prostitute, or (ii), to have exercised control, direction, or influence over the movements of a prostitute, in such a manner as to show that he is aiding abetting or compelling her prostitution with any other person, or generally, it shall be presumed, until the contrary is proved, that he is knowingly living on the earnings of prostitution.

2. The case, as originally set up before the Additional Presidency Magistrate, Mr. River, was with special reference to Sub-section (2) of the section and the charge was-framed in these terms:

That you Kambhoo Bera, between the first day of August 1925 and the 29th day of July 1926, in the town of Calcutta being a male person knowingly lived wholly, or in part on the earnings of prostitution of several inmates of premises-No. 37, Uma Das Lane, Calcutta, to wit, amongst others of Hari Bai, Paro, Chandra Debi, Saroj, Lakshimi and Sashi, by living with or being habitually in the company of the said prostitutes, or having exercised control, direction, or influence over the movements of the said prostitutes in such a manner as to show that you were aiding or compelling their prostitution with other persons generally, and thereby you, the said Kambhoo Bora, committed an offence punishable under Section 6, Clause (1) Calcutta Suppression of Immoral Traffic Act and within my cognizance.

3. The learned Chief Presidency Magistrate observed that the charge had been inartistically drawn, that it undertook to prove more than the prosecution had been able to establish, and more than it was presumably ever intended to establish, since there was no case in respect, of any of the women save and except, Saroj, and that, as matters stood, he was unable to hold it proved that Kambhoo lived with Saroj. He then went on to record the following findings:

I do not think it is at all proved that Kambhoo lives at 37, Uma Das Lane; the probability is that he lives at 64, Free School Street.... I am satisfied that he goes to Uma Das Lane and sits at the gates of the brothel at nights, and that he takes a hand in the proceedings there, and even accepts money, though I do not think it is satisfactorily proved what money it is that he takes. There is evidence that his men bring visitors; this, coupled with his evident desire to get Chandra back when she

ran away...indicates an exercise of control in such a way as to suggest that he was aiding and even compelling to prostitution. The evidence on these points is, however, not conclusive, and I am not prepared to raise the presumption permitted by Sub-section (2) of Section 6.

4. The learned Magistrate then goes on to comment upon the fact that the house in question and two others, so far from being let out by the accused at a loss, as contended by the defence, were let at exorbitant rents, and observes that the accused belongs to that class of men which relieves landlords of the troubles arising from the refusal of the civil Courts to grant decrees in enforcement of immoral contracts. He goes on to say:

We find Kambhoo giving his time and attention to this, going at night and sitting at the gate: and we find him taking pains to report when one of his tenants is missing; and we find further that she disappears mysteriously from the house of her benefactor and is traced again to the brothel of the man from whom she has just run away, and against whom she has just applied for police warning.

5. The question is, says the Magistrate, whether such a finding brings the accused within the purview of Section 6 of the Act, and his final conclusion is that it does, and he accordingly convicted and sentenced him as already stated.

6. The learned vakil for the appellant stated at the outset that he proposed to argue the appeal on the basis of the findings arrived at in the Court below, and his main contention was that, even if those findings be accepted, they are not sufficient to support a conviction under Section 6 of the Act, and that the mere acceptance of rent from persons known to the lessor to be living as prostitutes is not punishable under the section. He urged that the appellant was living not upon the earnings of prostitution, but upon his rent, and that, when some other act intervenes, such as the right of a lessee to collect his rent, it cannot be said that he is living on the earnings of prostitution, and that the money taken must be shown to be in some way or other directly connected with the act of prostitution.

7. The argument is plausible, but, having regard to the particular findings which have been arrived at in this case, it cannot in my opinion avail the appellant. If the

finding had been that the accused merely collected his rent daily from these women, whom he knew to be prostitutes, I think it is doubtful if the section would apply. The finding here, however, is more than that. The learned Magistrate has found that the accused used to go at night and sit at the gate. What is the significance to be attached to that fact? It seems to me that the only possible conclusion is that the accused was doing something more than collecting his rent, and that he was actively associating himself with the business of the brothel. The further facts which have been found by the Magistrate in connexion with one of the women who disappeared from the house and was recovered point to the same conclusion. It would be quite unnecessary for the accused to go and sit at the gate at night if his only object in going there was to collect his rent.

8. In short the evidence, as the learned Magistrate has observed towards the end of his judgment, goes somewhat further than the bare case raised by the defence, and having regard to the findings on that evidence I am of opinion that it has been proved that the accused was in part at all events living on the earnings of prostitution and that he is liable to the penalty provided in Section 6 of the Act.

9. In my judgment the appeal should be dismissed and the conviction and sentence upheld.

Cammiade, J.

10. The appellant has been convicted by the Chief Presidency Magistrate of an offence under Section 6, Calcutta Suppression of Immoral Traffic Act, Act 13 B.C. of 1923, and has been sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000. In default of payment of the fine he has been sentenced to a further term of rigorous imprisonment for six months.

11. The appellant is admittedly the tenant of three sets of premises, Nos. 26B, 37 and 38, Uma Das Lane; and he admittedly sublets these premises to prostitutes. He is also the tenant of 64, Free School Street, which is occupied by male subtenants. In order to substantiate the charge against the petitioner, a variety of allegations were made at the trial, and practically all of these have been disbelieved by the learned Magistrate. These various allegations and the learned

Magistrate's findings on them are as follows:

It was alleged that a prostitute by the name -of Chandra had been brought to Calcutta by a man who carries on such traffic and had been sold to the appellant, who had forced her to practice prostitution against her will and had appropriated her earnings, and that the appellant had similarly taken the earnings of other prostitutes living in his houses and that he shared the earnings of others. It was further alleged that the remuneration to be paid to prostitutes was settled at the gate of the premises, where admittedly the appellant sits very evening, and that the remuneration is paid by the visitors into the appellant's hands. It was further alleged that the appellant lived at 37, Uma Das Lane, with the prostitutes.

12. The learned Magistrate has disbelieved all the above allegations. He has held that it has not been proved that the appellant lives at 37, Uma Das Lane, and that the probability is that he lives at 64, Free School Street. He states that there is no evidence that Chandra was sold to the appellant, and that it has not been proved that the appellant lives with any of the prostitutes named in the charge. He further states that, though the appellant sits at the gate of the premises and receives money, it has not been satisfactorily proved what money it is that he takes.

13. The learned Magistrate further mentions that there is the evidence of one witness, witness 4, for the prosecution, to the effect that the appellant's men bring visitors to the prostitutes. His comment on this evidence and also on the evidence relating to a report made by the appellant to the police against Chandra is as follows:

The evidence on these points is, however, not conclusive; and I am not prepared to raise the presumption permitted by Sub-section 2 of Section 6.

14. The learned Magistrate sums up his findings in the following passages:

Briefly, then, the position is that Kambhoo is one of that class of men who relieve landlords of the troubles arising from the refusal of the civil Courts to grant decrees in enforcement of immoral contracts.

On the defence case, therefore, I think that Kambhoo is liable to punishment under Section 6; and the evidence, as I have shown, goes somewhat further than the bare case raised by the defence.

It is sufficient, it seems to me, for the prosecution to show that part of the income of the accused is to his knowledge derived from prostitution.

15. According to the learned Magistrate the facts he finds against the appellant are that he lets rooms to prostitutes and sits at the gate of the premises at nights to realize his rents, which are payable daily. As regards two of the allegations made against the appellant, namely that men of his bring visitors to the prostitutes and that the woman, Chandra, was compelled to return to the appellant's house after she had run away from there, the learned Magistrate has said that the evidence is not conclusive. He does not say what it is not conclusive of; but, judging from the words that immediately follow, one must conclude that the learned Magistrate intended to state that the evidence was not fully satisfactory, because, he says:

I am not prepared to raise the presumption permitted by Sub-section (2) to Section 6.

16. In Clause 2 to Sub-section 2 of Section 6 we find that

where a person is proved to have exercised control, direction or influence over the movements of a prostitute, in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, it shall be presumed, until the contrary is proved, that he is knowingly living on the earnings of prostitution.

17. The fact that the learned Magistrate holds that the evidence given before him does not raise this presumption clearly leads to the conclusion that the learned Magistrate did not believe the evidence. Had he believed the evidence, the presumption would clearly arise. Had the appellant compelled Chandra to return to his premises to carry on prostitution or were it true that the appellant had been proved to have brokers who brought visitors to the prostitutes living on his premises, his case would clearly fall within the terms of the rule laid down in Sub-

section (2).

18. The question, therefore, now arising is whether the facts found, namely that the appellant lets rooms to prostitutes and sits at the gate of the premises to collect his daily rent, amount to the offence made punishable by Section 6 of the Act.

19. The section reads as follows:

Any male person who knowingly lives, wholly or in part, on the earnings of prostitution shall be punished with imprisonment, &c.;

20. It will be noticed that the section applies exclusively to male persons; and this fact alone must make it clear that mere letting of rooms to prostitutes is not made an offence. Had the intention of the legislature been to make such letting of rooms punishable there is no reason why women should not be made punishable for doing the same thing.

21. The Act does not put the unfortunate women who live by prostitution outside the pale of the law and prohibit their living in rented houses or rooms. If we look at Section 3 of the Act, we find that the letting of houses and rooms to prostitutes is distinctly and expressly contemplated by the Act; and since that is so, earning of money by letting houses or rooms to prostitutes cannot by itself amount to living, wholly or in part, on the earnings of prostitution. If there were any substance in the contrary view every person who sold anything to a prostitute a seer of rice or a packet of cigarettes-knowing that the woman was a prostitute would be living in part on the earnings of prostitution.

22. The only question remaining to be considered is whether or not the fact that the appellant sits at the gate of the premises at nights to collect his rent brings his case within the purview of the section. The learned Magistrate has found that the presumption laid down by Sub-section (2) does not arise. The first clause of this sub-section raises the presumption where a male person is proved to be living with, or to be habitually in the company of a prostitute. He has also found that the appellant collects nothing more than his rent, which is paid to him by the

prostitutes after they have been visited. In these circumstances, however loathsome the appellant's calling may be, it is impossible to see how it can amount to an offence under the section.

23. I would, therefore, allow the appeal and set aside the conviction and sentence.

Duval, J.

24. In this case one Kambhoo Bera was put on his trial under Section 6, Calcutta Suppression of Immoral Traffic Act, before the Chief Presidency Magistrate and was convicted by him and sentenced to six months' rigorous imprisonment and a fine of one thousand rupees, in default, a further six months' rigorous imprisonment. The charge against him was that he was living wholly, or in part, on the earnings of prostitution of seven inmates of a certain premises No. 37, Umadas's Lane, Calcutta, and in support of that charge a large amount of evidence was adduced which may shortly be divided into three main heads the evidence of prostitutes living in the house itself a large body of evidence of local neighbours as to what was going on at the premises and the evidence of the landlords of three houses which were let out to the accused. The Chief Presidency Magistrate was unable to accept as good a large number of the statements made by the prostitutes and cast doubts on some of the other evidence as he considered that it might have been brought owing to ill feeling between the accused¹ and some of the witnesses. But he did come to certain findings and in the hearing before me most of these findings are not contested. The admitted facts are that there are three houses in Umdas's Lane, Nos. 37, 38 and 26(b), all of which are inhabited by prostitutes and apparently have been so inhabited for a long time, that the accused has taken leases of these three houses from their respective landlords and is personally collecting the rents' daily from the unfortunates living therein. It is also in evidence that he pays rent to the landlord, Rs. 125 in respect of house No. 37. We have no evidence as to what rent he actually pays for the house No. 38 and as to house No. 26(b) the evidence is that he only took it about a month before this prosecution was launched at a rental of Es 210. The landlord of premises No. 37 admits that he has let it out knowing it to be used by prostitutes so as not to have trouble of collecting rents himself and this appears to be the

case in respect of the other two houses. Now as to this, the evidence also goes to show that he charges daily rent from the-e women and he goes regularly down this street though his residence is in another rented house a little way away and personally sees to the collection of rents. There is also evidence to show that his men are also engaged in seeing the people who visit these women and there is a further fact that he charges Rs. 1-4-0 a day or so rent from each of the women, and on any calculation this must give him a large profit in respect of three houses.

25. We are concerned, however, only with house No. 37, in which six or seven women are said to live and even that house must bring in to him a considerable amount of profit per month. There is, therefore, evidence that he does make a fine profit by having taken lease of premises No. 37 and by collecting rent from the women living there. There is also evidence that he personally goes there and sees to the collection of rent daily and his men also interview visitors. There is also some evidence¹ that at times he interviews visitors himself and the evidence is that the women receive payments from the visitors and, after they are paid, hand the rents over to him. Now the question arises whether these facts, which I find from the evidence fully established, show that an offence under Section 6 of the Act has been committed. The mere payment of rent by a prostitute to a landlord would not in my opinion bring the case (as the Chief Presidency Magistrate appears to have thought) within the mischief of the section. A prostitute must find somewhere to live, whatever her occupation may be and; however she earns her money, and there are cases in England to show that the landlord cannot be convicted in respect of the keeping of a brothel which in England is illegal, because he only derives profit by taking a high rate of rent. I may refer specially to the case of *Reg. v. Samuel Stannard* [1864] 9 L.T. 428. But that case, on its own facts, is very different from the present case. In that case the landlord had no control over any inmates of the house though no doubt he let it out to people for immoral purposes, and, therefore, he had no right to decide as to who was to be admitted and who not into the house. Here the case is very different. Here the evidence goes to show that he took these three houses for the purpose of making a living out of them and the 'evidence shows that he makes a fine profit out of them. He also is not content with simply collecting his rents once a week or once a month, but he attends there daily and has full control over them. The oral evidence

of the neighbours shows (that he is also daily sitting outside the houses, collecting his rents, at times interviewing visitors, and having men there to assist him and, in my opinion, this is not a case of simply having let out the houses to some women who used them for immoral purposes, but is also a lease where the lessee has taken the houses so as to make a profit out of prostitution and is making a profit by the interest and control that he is still exercising over the women and over the premises in question.

26. In this view I hold that the Chief Presidency Magistrate has rightly convicted the accused and, therefore, I uphold the sentence and conviction.

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