

Joseph Vs. State of Kerala

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Court : Kerala

Decided On : Jun-16-2011

Judge : Thomas P. Joseph

Appeal No. : Crl.MC.No.1514 of 2011

Appellant : Joseph

Respondent : State of Kerala

Judgement :

1. Petitioner is the fourth accused in Crime No.330 of 1998 of Ernakulam Town North Police Station and C.C.No.595 of 2002 of the Court of learned Judicial First Class Magistrate-II, Ernakulam for offences punishable under Secs.3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short, "the Act"). The case is that on 21.11.1998 at about 4.30p.m the first accused, in order to earn a livelihood by using her house as a brothel, brought accused 2 and 3 to her house and accused 2 and 3 attempted to have sexual intercourse with petitioner for profit and thereby petitioner and others committed offences as alleged. Petitioner seeks to quash proceeding against him. Learned counsel for petitioner contended that detection of the offence and investigation are wholly illegal and at any rate, offence under Secs.3, 4 and 5 of the Act cannot be attributed to the petitioner. Learned counsel has placed reliance on the decision of the Supreme Court in Delhi Administration Vs. Ram Sing (AIR 1962 SC 63) and Sainudeen Vs. Sub Inspector of Police (2002(1) KLT 693) and an unreported decision of this Court dated December 10,

2009 in CrI.M.C.No.3533 of 2009. I have heard learned Public Prosecutor also.

2. It is not disputed before me that the offence was allegedly detected by the Circle Inspector, Ernakulam Town North Police Station and that at the relevant time, the Special Police Officer empowered to act under the provisions of the Act was the Assistant Commissioner, Ernakulam. Under Sec.14(ii) of the Act, when the Special Police Officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under the Act, he shall give such subordinate officer an order in writing specifying the person to be arrested and the offence for which arrest is being made. The provision further says that the officer authorised, before arresting the person shall inform the substance of the order and on being required by such person, show him the order. In the present case an authorisation was given by the Assistant Commissioner of Police, Ernakulam to the Circle Inspector who is said to have detected the offence. That authorisation says that the Special Police Officer got reliable information that offences under the Act is being committed in house No.40/201, Illathu Parambu House, S.R.M road, Kallur within the limits of Ernakulam Town North Police Station, search of that house without undue delay is necessary and hence the Circle Inspector is authorised to conduct search and arrest persons who are founded to have committed offences under the Act, register a case and carry out further necessary action in the matter according to law.

3. I referred to Sec.14(ii) of the Act which states that authorisation which the Special Police Officer gives to his subordinate officer in the circumstances stated should mention apart from the offence, the person to be arrested. Possibility of the situation coming under sub sec (iii) of Sec.14 of the Act does not arise in this case since that provision deals with a situation where an officer subordinate to the Special Police Officer is required in certain circumstances to arrest the offender even without such authorisation in writing. Here the authorization was given and hence it comes under subsec (ii) of Sec.14 of the Act. That provision to apply the authorisation must mention the name of person to be arrested. Learned Judge of this Court in Sainudeen Vs. Sub Inspector of Police (supra) has considered that question and held that an order in writing can be given by the Special Police Officer specifying the person to be arrested only after seeing that a particular

person has committed the offence. Though, I have my own reservation about that observation of the learned Judge, the rest of the decision that the authorisation should mention the person to be arrested has to be accepted in view of the apparent direction contained in subsec. (ii) of Sec.14 of the Act. Unfortunately the authorisation in the present case does not mention the name of any of the person to be arrested. In Annexure-IV, judgment, in similar situation where the authorisation did not contain name of the person to be arrested, this Court held that such authorisation is invalid and prosecution cannot stand. Hence the authorisation in the case does not stand the test of law.

4. There is also yet another aspect that is required to be looked into. Under Sec.13 of the Act, a Special Police Officer shall be appointed "for dealing with the offences under this Act in that area". "Dealing with the case" means doing everything connected with the progress of the case. The Supreme Court in the decision referred supra considered that question and held that the expression would include detection, prevention and investigation of offences and other duties which have been specifically imposed on the Special Police Officer under the Act. It is seen from the records that investigation of the case was conducted by the Circle Inspector though, as authorised by the Special Police Officer and the role of the Special Police Officer was only to verify the investigation and submit final report. Sec.14(ii) of the Act does not empower the Special Police Officer to authorise investigation of the case to be conducted by any other officer. If that be so the investigation conducted by the officer other than the Special Police officer is against the provisions of law.

5. It is pointed out by learned counsel that Secs.3, 4 and 5 of the Act have no application to the petitioner in that Sec.3 relates to running of a brothel, Sec.4 relates to living on the earnings out of prostitution and Sec.5 relates to procuring woman for prostitution.

6. In view of what I have stated above, prosecution against petitioner cannot stand and is liable to be set aside.

7. Resultantly this criminal miscellaneous case is allowed. Proceeding against petitioner in C.C.No.595 of 2002 of the Court of learned Judicial First Class

Magistrate-II, Ernakulam (arising from the final report in Crime No.330 of 1998 of Ernakulam Town North Police Station) are quashed.

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