SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Jugmander Lal

Crl.A.No.114 of 1965

(A. K. Sarkar and J. R. Mudholkar, JJ.)

09.12.1965

JUDGEMENT

MUDHOLKAR, J.:

1. In this appeal by special leave from a judgment of the High Court of Bombay the short point for consideration is whether it is obligatory upon the Court which convicts a person of an offence under S. 3 (1) of the Suppression of Immoral Trafic in Women and Girls Act. 1956 to pass a sentence of imprisonment where the conviction is, in respect of a first offence, for a term not less than one year and not merely to a sentence of fine. The Presidency Magistrate, Bombay, held the respondent guilty of an offence under S. 3 (1) of the Act for keeping a brothel or allowing the premises in his occupation to be used as a brothel and passed a sentence of fine of Rs. 1,500 but did not pass a sentence of imprisonment. The respondent was also found guilty of an offence under S. 4 (1) of the Act for living on the earning of prostitution and sentenced by him to pay a fine of Rs. 500. The respondent challenged his conviction in respect of each of the two offences as well as the sentences awarded to him. The High Court affirmed his conviction for these offences. The State preferred an application for revision before the High Court for enhancement of the sentences which was heard along with the appeal. It was contended on behalf of the State that it was obligatory on the part of the Magistrate to pass the minimum sentence of imprisonment against the respondent in respect of

the offence as provided under S. 3(1) of the Act. It was also contended that though there was no obligation on the Magistrate to pass a sentence of imprisonment in respect of the offence under S. 4 (1) of the Act, sentence awarded by him was inadequate. The High Court enhanced the sentence of fine in respect of the offence under S. 3 (1) to a sum of Rs. 2,000. In so far as the other offence was concerned the High Court set aside the sentence of fine and instead directed that the respondent be released on his entering into a bond for a sum of Rs. 2,000 under S. 562 of the Code of Criminal Procedure to keep peace and be of good behaviour for a period of three years.

The provisions of S. 3 (1) of the Act read thus:

"Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees".

The High Court took the view that the word "punishable" in the aforesaid section instead of "punished" necessarily postulates a certain descretion on the Court to impose a sentence of imprisonment or a sentenced of fine or both. The High Court felt that there was no escape from the construction in view of the interpretation put by the full Bench of that Court as to the meaning to be adopted in view of the use of the word "punishable" in prescribing a punishment". The decision relied upon by the High Court is Emperor v. Peter D'Souza, AIR 1949 Bom 41 (FB) That was a case under Section 43 (1) of the Bombay Abkari Act, 5 of 1878. The provision which the Full Bench had to construe was substituted for the original provision by Bombay Act 29 of 1947. The original provision was that a person "shall on conviction, be punished for each such offence with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000 or with both," The Amending Act, 1947 substituted for his the following provision.

"Shall' on conviction, be punishable for the first offence with imprisonment for a term which may extend to six months and with fine which may extend to Rs.1000 ;

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than R. 500"

It was contended before the Court that the object of the amended provision was to make it obligatory upon the Court convicting a person of an offence under that Act to pass a sentence of imprisonment which shall ordinarily not be less than three months, while it was not obligatory to pass a sentence of imprisonment under the original provision.

2. It is significant to notice that the expression used in the original provision is "punished" and not "punishable". A bare perusal of the Penal Code would show that the Legislature has in the penal provision also used the expression "punished". This is so even where discretion has been conferred upon the Court to award a sentence of fine in lieu of or in addition to a sentence of imprisonment. The mere use of the word "punished" or the word "punishable" is not determinative of the intention of the legislature to empower the Court to select one or more kinds of sentences prescribed by it for an offence or to making it obligatory upon it to pass a particular sentence or sentences so prescribed. One thing follows with certainty from the use of either of these expressions and that is that upon the conviction of a person for the particular offence the Court is bound to award punishment. What the nature and extent of the punishment to be awarded has to be ascertained by a consideration of the entire penal provision. Now let us consider S. 43 (1) as it was before its amendment in the year 1946. There the Legislature had said that the convicted person shall be "punished". Then it proceeded to say that the punishment shall be (a) imprisonment for a term which may extend to six years; (b) or a fine which may extend to Rs. 1,000; (c) or imprisonment as well as fine. If the whole provision is construed it is clear that despite that use of the words "punished with" the nature of the sentence was left to the discretion of the Court. Even if the word "punishable" had been used instead of "punished" the result would have been the same because of the use of the word "or". That is to say that the provision would have been open to only one construction and that is that it was discretionary with the Court to choose the nature of punishment to be awarded to a convicted person. Since all this was clear there would have been no point in amending the provision in the year 1947 if the nature of the punishment was still to be left to the discretion of the Court. The plain meaning of the words "shall, on conviction, be punishable for the first offence with imprisonment for a term which may extend to six months and with fine which may extend to rupees one thousand" would be that the Court convicting a person of an offence under the Act was bound to award a sentence consisting both of imprisonment and fine. The words "may extend' preceding "six months" and "rupees one thousand" respectively merely give discretion to the Court in so far as the extent of imprisonment or fine to be awarded is concerned and nothing more. It is obvious that the Legislature replaced the original "or" which gave an option to the Magistrate by "and" to make its intention clear. The Full Bench however, expressed the view that by using the expression "punishable" the Legislature conferred a discretion of the Court and because of the use of that expression the Full Bench has construed "and" as meaning "and/or". It is no doubt true that the expression "punishment. "Liable to punishment "only means that a person who has contravened a penal provision will have to be punished. Thus it does not mean anything different from "shall be punished" Punishment is obligatory in either case. But, as already observed, what the nature of punishment is to be must be ascertained by a consideration of the whole of the penal provision. We, therefore, are unable to accept the view of the Full Bench that by merely using the expression "punishable" the Legislature intended to say that a discretion was left with the Court to determine the nature of punishment. If the view of the High Court that the word "punishable" imports a discretion in the Court were to be accepted an astonishing result, would ensue it would follow that there is discretion in the Court whether to punish a convicted person at all or not. Mr. Garg frankly says that he cannot support a construction which would lead to such a result. Once the position is reached that the expression "punishable" does not confer a discretion on the Court whether to award a punishment or not, no difficulty arises in construing the section and so the conjunction "and" is not required to be construed to mean the opposite, that is, to mean "or".

3. Mr. Garg tried to rely upon the proviso in support of his contention that the determination of the nature of the sentence was left in the discretion of the Court. In our opinion the proviso does not afford any assistance to him. On the other hand it would seem to fetter the discretion of the Court still further by making it obligatory upon the Court to pass, ordinarily, a sentence of imprisonment of not less than three months.

4. We have discussed the Full Bench decision at length because the High Court has relied upon it, and the word "punishable" occurs in the provision which we have to construe here. In the context in which the word "punishable" has been used in S. 3 (1) it is impossible to construe it as giving any discretion to the Court in the matter of determining the nature of sentences to be passed in respect of a contravention of the provision. By using the expression "shall be punishable" the Legislature has made it clear that the offender shall not escape the penal consequences. What the consequences are to be are then specified in the provision and they are rigorous imprisonment for a period not less than one year and not more than three years and also a fine which may extend to Rs. 2,000. These are the punishments with respect to a first offence and higher punishments are prescribed in respect of a subsequent offence. By saying that a person convicted of the offence shall be sentenced to imprisonment of not less than one year the Legislature has made is clear that its command is to award a sentence of imprisonment in every case of conviction. It is difficult to conceive of clearer language for couching such command. We have no doubt that the High Court was in error in construing this section in the manner it has done. The logical result of this would be to pass a sentence of imprisonment upon the respondent for a period not less than one year in respect of the offence under S. 3 (1) of the Act. However, when special leave was granted this Court made the following order.

"Special leave granted. It may be recorded that counsel for the State states that the States will not insist on this accused person's going to jail. It will be open to consideration of the Court hearing the appeal to keep this in mind in deciding the matter.................."

Mr. Bindra who appeared for the State did not insist that we should send the respondent to jail - which would be the result if we pass a sentence of imprisonment made obligatory by the law. In the circumstances we leave the matter where it is and merely pronounce our interpretation of the law.

Appeal allowed.