

Krishnamurthy Tailor Krishnan

Vs

Public Prosecutor, Madras

Criminal Appeal No. 251 of 1964

(S. M. Sikri, V. Ramaswami-I, V. Bharagava JJ)

26.09.1966

JUDGMENT

RAGHUBAR DAYAL, J.

Krishnamurthy @ Krishnan was convicted by the III Presidency Magistrate, Saidapet, Madras, of the offence under s. 4(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act 104 of 1956), hereinafter called the Act, and was sentenced to nine months' rigorous imprisonment, though he was charged with an offence under s. 3(1) of that Act. He appealed against his conviction to the High Court. The State Government appealed to the High Court against the acquittal of the appellant of the offence under s. 3(1) of the Act. The High Court dismissed the appellants' appeal but allowed the State appeal and altered the appellant's conviction to one under s. 3(1) of the Act and sentenced him to two years' rigorous imprisonment and a fine of Rs. 50/- as he was a second offender. It is against this order of the High Court that the appellant appeals, by special leave.

The prosecution case, briefly, is that the Assistant Commissioner of Police (Vigilance), P.W. 4, having information that the house occupied by the appellant was being used as a brothel with three girls, Saroja, Ambika and Lakshmi, deputed Shanmugham, P.W. 2, as a decoy, on August 22, 1962. Shanmugham was given three marked 10-rupee currency notes by P.W. 4. He went to the appellant's place and was shown the three girls. He selected Ambika and paid Rs. 30/- in those marked currency notes to the appellant. He and Ambika then went inside a room. Thereafter, the police party raided the house and found the decoy Shanmugham and Ambika in a dishevelled condition in that room. P.W. 4 recovered the marked currency notes from the possession of the appellant.

The main question in this appeal is whether the facts found make out the offence under s. 3(1) of the Act. Section 3(1) reads :

"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 a 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."

'Brothel' is defined in cl. (a) of s. 2. It includes any house, room or place or any portion of any house, room or place which is used for purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes. One will be guilty of the offence under s. 3(1) of the Act if he does any of the acts mentioned in

that sub-section in relation to a brothel. The appellant's house, on the facts found, was being used as a brothel. The girls were offered for the purpose of prostitution. The house was used for such purposes, undoubtedly for the gain of the appellant who pocketed the money which was given by P.W. 2 for committing prostitution on Ambika. Of course, it can be presumed that the girls who were being offered for the purpose of prostitution, would also obtain monetary gain out of the amount paid by P.W. 2. The appellant can therefore justifiably be said to be 'keeping a brothel'.

It has been urged, however, that a solitary instance of the house of the appellant being used for the purpose of prostitution will not suffice for establishing that the house was being 'kept as a brothel'. It may be true that a place used once for the purpose of prostitution may not be a brothel, but it is a question of fact as to what conclusion should be drawn about the use of a place about which information had been received that it was being used as a brothel, to which a person goes and freely asks for girls, where the person is shown girls to select from and where he does engage a girl for the purpose of prostitution. The conclusion to be derived from these circumstances about the place and the person 'keeping it' can be nothing else than that the place was being used as a brothel and the person in charge was so keeping it. It is not necessary that there should be evidence of repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances is sufficient to establish both that the place was being used as a brothel and that the person alleged was so keeping it.

We are of opinion that the facts found in the present case justify the conclusion that the appellant was keeping a brothel at his house. The appellant's conviction under s. 3(1) of the Act is therefore correct.

The appellant has been awarded enhanced punishment as his present conviction was a second conviction. His first conviction was under ss. 5(1) and 8(1) of the Madras Suppression of Immoral Traffic Act, 1930 (5 of 1930) hereinafter called the Madras Act, in Criminal Case No. 1028 of 1955 from the Court of the III Presidency Magistrate, Madras. The previous conviction is not disputed. What is urged for the appellant is that it was not a conviction under the Act and therefore his present conviction cannot be considered to be a second conviction under s. 3(1) of the Act.

Section 5(1) of the Madras Act provided that any person who kept on managed or acted or assisted in the management of a brothel would be punished with imprisonment which might extend to two years or with fine which might extend to one thousand rupees or with both. The appellant's conviction under s. 5(1), therefore, was for an offence which would have been an offence under s. 3(1) of the Act also.

Section 25 of the Act reads :

"(1) As from the date of the coming into force in any State of the provisions other than section 1 of this Act, all State Acts relating to suppression of immoral traffic in women and girls or to the prevention of prostitution, in force in that State immediately before such date shall stand repealed.

(2) Notwithstanding the repeal by this Act of any State Act referred to in sub-section (1), anything done or any action taken (including any direction given, any register, rule or order made, any restriction imposed) under the provisions of such State Act shall in so far as such thing or action is not inconsistent with the provisions of this

Act be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by any thing done or any action taken under this Act."

Thus, when the Act came into force in 1956, the corresponding provisions of the Madras Act stood repealed, by virtue of sub s. (1) of s. 25. By virtue of sub-s. (2), the conviction of the appellant under s. 5(1) of the Madras Act would be deemed to be conviction under s. 3(1) of the Act, an Act deemed to be in force at the time the conviction took place. It follows that the that present conviction of the appellant will have to be taken as a second conviction, within the meaning of the expression in sub-s. (1) of s. 3 of the Act, and the appellant would be liable to suffer enhanced punishment under that sub-section.

The result is that there is no force in this appeal. It is accordingly dismissed.

Y.P.

Appeal dismissed.

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