

Shri A. C. Aggarwal, Sub-Divisional Magistrate Delhi & Anr

Vs

Mst. Ram Kali, Etc.

Criminal Appeals No. 76-82 of 1965

(CJI K. N. Wanchoo, R. S. Bachawat, V. Ramaswami- I , G. K. Mitter, K. S. Hegde JJ)

16.08.1967

JUDGMENT

HEGDE, J. -

These are companion appeals. They were brought to this Court on the strength of the certificates issued by the High Court of Punjab. The only question that falls for decision in these appeals is whether s. 18 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred to as the Act) is ultra vires Art. 14 of the Constitution. The attack on the validity of that section on the basis of Art. 19(d), (e) and (f) was not pressed at the time of the hearing. Hence there is no need to examine the said plea.

The first appellant in these appeals, Shri A. C. Aggarwal, Sub-Divisional Magistrate, Delhi, issued notices to the respondents in these appeals - except that in criminal appeal No. 82 of 1965 - to show cause why the premises occupied by them should not be attached under s. 18(1) of the Act. Those notices were issued on the basis of police reports that those premises were being used as brothels. In reply amongst other pleas those respondents challenged the validity of s. 18. They moved the learned magistrate to refer the question as to the validity of s. 18 to the High Court under s. 432 of the Criminal Procedure Code of 1898. As the learned magistrate rejected that prayer, they moved the High Court under Art. 226 of the Constitution in criminal writs Nos. 3D to 7D and 10D of 1962, challenging the vires of s. 18. Respondent in criminal appeal No. 82 of 1962 claims to be the tenant in flat No. 54 on the first floor of Japan Building, which premises had been attached in the proceedings against one Mst. Ambar under s. 18(1). His case was that he had permitted the said Mst. Ambar to use those premises temporarily but she had vacated the same and therefore he was entitled to their possession, as according to him he was unaware of the fact that Mst. Ambar was using the premises in question for an improper purpose. But the learned magistrate rejected his application holding that (a) there was no satisfactory proof of the fact that he was a tenant in those premises and (b) he was aware of the unlawful use to which the premises in question were being put. Aggrieved by that decision, he moved the High Court of Punjab in Cr. Writ No. 12-D/62 to quash the order of the learned magistrate on the ground that s. 18 was ultra vires of Article 14.

The aforementioned writ petitions were heard by Mahajan and Shamsheer Bahadur, JJ. and by a common order dated September 9, 1963, they allowed those petitions and quashed the notices issued to the respondents in criminal appeals Nos. 76 to 81 of 1965. They also quashed the order refusing to raise the attachment in respect of flat No. 54 of which Siri Chand the respondent in Criminal appeal No. 82/65 claimed to be the tenant. The learned Judges held that "whenever action is taken under s. 18 independently of s. 7, it would offend Art. 14 of the Constitution and to that extent s. 18 would be ultra vires of the Constitution."

In the course of their order dated 23rd July, 1963, the learned Judges observe :

"The requirements for taking action under Section 18 or under Section 7 of the Act are identical. The Act leaves the choice of the action under one or the other provision to the executive in the case of persons similarly situate and thus can lead to discrimination without there being any rational basis for the same. The consequences of an action in one case are of an extremely penal nature whereas in the other case, that is, under Section 18, of comparatively inconsequential nature. The discrimination can come about where in the case of a number of prostitutes, who carry on their profession within two hundred yards of a public place, as defined in Section 7, the authorities may take action against some of them under Section 18 and against the others under Section 7. The fact that this can happen is not controverted by the learned counsel for the Delhi State. We also find no reasonable behind this type of discrimination. The scheme of the Act also does not provide any key for such sort of discrimination between persons of the same class and similarly situate".

The inhibition of Art. 14 that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against discrimination by the State amongst equals and to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile treatment. If law deals equally with all of a certain well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons and, therefore, there is no discrimination amongst equals. Every classification is in some degree likely to produce some inequality but mere production of inequality is not all by itself enough. The inequality produced in order to encounter the challenge of the Constitution must be the result of some arbitrary step taken by the State. Reasonable classification is permitted but such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the thing in respect of which such classification is made. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, and its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

The contention advanced on behalf of the respondents and accepted by the High Court, is that s. 18 discriminates against the person who is proceeded against under that section, without first being prosecuted under s. 3 or s. 7 as the case be, though the information laid against him discloses an offence either under s. 3 or s. 7. Section 18 covers two classes of cases, namely, persons who have been prosecuted and found guilty of an offence either under s. 3 or s. 7 as well as persons not dealt with under those provisions. In the case of the former, they have the benefit of regular trial, they can cross-examine the prosecution witnesses, adduce defence evidence and also go up in appeal if convicted. In those cases the result of the proceedings under s. 18 largely though not entirely depends on the result of the connected prosecution. But in the case of the latter, i.e. those who are only proceeded against under s. 18 they have only a right of 'hearing'. It is further argued on their behalf that under s. 3 or s. 7 action is taken before a court, whereas the proceeding under s. 18 is taken before a magistrate. In the latter case the Act does not lay down the scope of the hearing provided for.

It was lastly urged that the facts to be proved both in prosecutions under ss. 3 and 7 and in proceedings under s. 18 are identical; hence, there is no justification for adopting two widely

different procedures. In support of their contention that the difference in the two procedures prescribed amounts to a discrimination under Art. 14, reliance was placed on the decision of this Court in the State of West Bengal v. Anwar Ali Sarkar ([1952] S.C.R. 284).

We shall now proceed to examine the correctness of these contentions. The Act was enacted in pursuance of an international convention signed at New York on the 9th day of May, 1950. It provides for the suppression of immoral traffic in women and girls. The sections that are material for our present purpose are 3, 7 and 18. Section 3 provides for punishment for keeping a brothel or allowing premises to be used as a brothel. Section 3(1) provides for the conviction and punishment of a person who keeps or manages or acts or assists in the keeping or management of, a brothel. Sub-s. (2) of that section provides for the conviction and punishment of a person who being (a) tenant lessee or occupier or person incharge of any premises, uses or knowingly allows any other person to use, such premises or any part thereof as a brothel, (b) the owner lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the premises or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel or is wilfully a party to the use of such premises or any part thereof, as a brothel. "Brothel" is defined in s. 2(a) as including a house, room, or place or any portion of any house, room of place, which is used for the purpose of prostitution for the gain of another person or for the mutual gain of two or more prostitutes. "Prostitute" is defined in s. 2(e) as meaning a female who offers her body for promiscuous sexual intercourse for hire whether in money or in kind.

Section 7 provides for the punishment of prostitution in or in the vicinity of public places. That section read :

"(1) Any woman or girl who carries on prostitution, and the person with whom such prostitution is carried on, in any premises which are within a distance of two hundred yards of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or District Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

(2) Any person who -

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permit the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees."

Public place is defined in s. 2(h) as meaning any place intended for use by or accessible to the public and includes and public conveyance.

Now we may refer to s. 18. It reads :-

"(1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred yards of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders -

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion;

(b) directing that before letting it out during the period of one year immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate :

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A Court convicting a person of any offence under section 3 or section 7 may pass orders under sub-section (1), without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the Magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year :

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a Magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly."

Section 3 and 7 provide for the punishment of persons guilty of the offences mentioned therein. Any contravention of the provisions mentioned therein amounts to a cognizable offence in view of section 14, whereas a proceeding under s. 18 is in no sense a prosecution. It is a preventive measure. It is intended to minimise the chance of a brothel being run or prostitution being carried on in premises near about public places. Naturally, in the case of prosecutions, a regular trial with a right of appeal is provided for. The enquiry contemplated by s. 18 is summary in character.

The attachment contemplated by that section can ensure only for a period of one year. Under these circumstances evidently the Legislature thought that a regular trial and an appeal against the order of the magistrate is not called for. In these cases it is unnecessary for us to spell out the scope of the expression "hearing" found in s. 18. It is necessary to remember that ss. 3 and 7 deal with persons guilty of offences whereas s. 18 deals with the premises mentioned therein. It is not correct to say that the set of facts to be proved in prosecutions under ss. 3 or 7 and in proceedings under s. 18 are identical. In the former the prosecution to succeed has to establish either the intention or knowledge referred to therein but in the latter they are not necessary ingredients. Section 18 provides for two classes of cases namely, (1) those coming either under s. 3 or 7 as well as under s. 18 and (2) those coming only under s. 18. They are two distinct classes of cases - a classification which has reasonable relationship with the object sought to be achieved and therefore falls outside the rule laid down by this Court in Anwar Ali Sarkar's ([1952] S.C.R. 284) case.

From the copies of the reports made in these cases to the magistrate by the police - made available to us at the hearing of these appeals - it is clear that they disclose offences under s. 3 against the respondents. Therefore, the question is whether the magistrate can choose to ignore the cognizable offence complained of and merely have recourse to s. 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in mind the purpose of these provisions as well as the Act and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases like those before us the magistrate who is also a court as provided in s. 22 must at the first instance proceed against the persons complained against under the penal provisions in ss. 3 or 7 as the case may be, and only after the disposal of those cases take action under s. 18 if there is occasion for it. Under s. 190(1)(b) of the Code of Criminal Procedure, the magistrate is bound to take cognizance of any cognizable offence to his notice. The words "may take cognizance" in the context means "must take cognizance". He has no discretion in the matter, otherwise that section will be violative of Art. 14. But as laid down in Delhi Administration v. Ram Singh ([1962] 2 S.C.R. 694) only an officer mentioned in s. 13 can validly investigate an offence under the Act. Hence if the cases before us had been investigated by such an officer, there is no difficulty for the magistrate to take cognizance of those cases. Otherwise it is open to him to direct fresh investigations by competent police officers before deciding whether the facts placed before him disclose any cognizable offence.

In the result, we hold, for the reasons mentioned above, that the proceedings taken by the learned magistrate against the respondents are not in accordance with law as he has proceeded against them under s. 18 without first taking action under s. 3. For that reason we uphold the conclusions reached

by the learned Judges of the Punjab High Court but on grounds other than those relied on by them. But this conclusion of ours does not debar the learned magistrate from taking fresh proceedings against the respondents in accordance with law as explained by us earlier.

In the result, these appeals fail and are dismissed.

Appeals dismissed.

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