

Chitan J. Vaswani and Another

Vs

State of West Bengal and Another

Criminal Appeal No. 300 of 1975

(V. R. Krishna Iyer, A. C. Gupta JJ)

10.10.1975

JUDGMENT

KRISHNA IYER, J. -

1. Not for dramatic effect but to sting social conscience, we set out the tragic story of this case which is typical of the spreading disease of immoral traffic, to remedy which the suppression of Immoral Traffic in Women and Girls Act, 1956 (for short, the act) was enacted by Parliament in a mood of high morality but with such drafting inefficiency that it has pathetically failed to produce any decline in the malady.

(2) The scene is the Isia Bar, 15 Free school, Calcutta. A hall of enchantment extends nocturnal invitation to have a nice time with svelte sylphs. The entrance fee is but a paltry Rs. 15 per man and inside is served animating liquor. Scantly clad female flash of sweet seventeen or thereabouts flit about or on laps, to the heady tune of band music. They solicit carnal custom, and the willing male victims pay Rs. 30, choose whom they fancy, drink together and, taking leave of decencies, indulge in promiscuous sex exercise legally described as operation prostitution. The stage is busy with many men and girls moving into rooms, lavatories and chambers. The curtain rises and a raiding party of police and excise officers surprise this erotic company drowned in drink and damsels.

3. This lecherous drama need not detain us further. The Act went into action, a prosecution was launched against many under Section 7 resulting in conviction and sentence of two persons, the proprietor and the manager of the Isias Bar. Oftentimes, a bar or restaurant is a euphemism for a brothel and the socialites, unsuspectedly and without smirch, satisfy their ex parte in the respectably labelled houses patronised by even prestigious dignitaries and opulent businessmen.

4. An appeal to the High Court substantially failed and the appeal by the State on some counts, partly succeeded. In this Court, leave was refused regarding the challenge against the guilt and so the findings sustaining the conviction stand; but it is necessary to clarify that ultimately the High Court modified the conviction to an extent and we have to proceed on the footing that the accused have been found guilty of offences under Section 7(2) (a), Section 3(1) but acquitted under Section 7(2)(b). What is most pertinent to the present appeal is that order was made under Section 18(1), read with Section 18(2), directing

the occupiers of portion of premises No. 15 and 15/A, free school street commonly known as 'Isia Bar' to be evicted therefrom within a period of seven days from the date of this order and restore possession thereof to the owner landlord or his agent and we further direct that premises or any portion thereof shall not be leased out, or otherwise given possession of, to or for the benefit of the

person or persons, who were connected with the improper user thereof.

We had granted special leave limited to the attack on this order for eviction under Section 18(2), read with Section 18(1). The area of discussion in these arguments is thus confined to the power to throw out the occupier of the guilty premises on conviction for offences under Sections 3(1) and 7(2) (b) on top of the sentence imposed.

5. An appreciation of the legal tangle can be facilitated by a brief but necessary sketch of the indubitable foundational facts and the basic legal provisions bearing on the orders under Section 18. The court, as earlier mentioned, passed an order, following on the sentence, that since a conviction under Sections 3 and 7 had been rendered, there would be a direction evicting the appellants-occupiers from the theatre of prostitutional operation, viz., the Isias Bar. The bar is beyond the offending distance of 200 yards of any 'public place' referred to in sub-section (1) of Section 7. The said sub-section itemises premises such as places of public religious worship, educational institutions, hostels, hospitals, nursing homes and such other public places as may be notified by the authority designated. At the same time it is a proven fact that the appellants have been keeping or managing a brothel within the meaning of Section 3(1), and are keepers of a public place knowingly permitting prostitutes for the purposes of their trade to resort to or remain in such public place, viz., the Isias Bar. Section 18, sub-sections (1) to (4) may be reproduced in extenso before analysing the submissions made by Counsel on either side :

18. (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 order -

(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 let or otherwise given possession of, to or for the benefit of the person who was allowing the improper use 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 or 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.

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6. The project of the statute, to the extent we are concerned, may now be set out. When a magistrate receives information that any brothel is being run within a distance of 200 yards of any public place such as has been mentioned earlier [in sub-section (1) of Section 7] he may issue notice to the owner, tenant, occupier or other person in charge of or connected with the brothel to show cause why it should not be attached for improper user. After a hearing being conducted, the magistrate, if satisfied, may order eviction of the occupier and further direct that the owner or landlord shall not let out the premises for a period of one year after the passing of the order, without his previous approval. In short, the house of ill-fame where Mrs. Warren's Profession is carried on is virtually sealed off by attachment by the magistrate. However, if the owner satisfies the magistrate of his innocence, it may be restored to him with a direction that it shall not be leased out to the person who had been improperly using it for immoral purposes.

7. Section 18(1) proprio vigore applies only to brothels within the vicious distance of 200 yards of specified types of public institutions. No criminal prosecution or conviction is necessary for taking action under Section 18(1). Strictly speaking, this is not a punitive provision but a preventive one. This power vested in the magistrate is calculated to ensure moral hygiene in the locality which is particularly sensitive. If one may say so, it is a moral scavenging operation, or a fumigation process whereby the dangerous visitations may be totally inhibited by a legally enforced closure. So far as we are concerned, the Isias Bar is not shown to be within the offending distance and Section 18(1) cannot therefore apply. Indeed the Magistrate and the High Court have proceeded to exercise powers under Section 18(2) and the entire controversy before us is as to the real import of that provision. By way of aside, we may say that plausible submissions were urged by Shri D. Mukherjee, supported by the language of Section 18(2). Had the drafting been more careful and lucid, the argument would have been obviated. This Court has, more than once, pointed out that lack of legislative simplicity has led to interpretative complexity. The home truth that legislation is for the people and must, therefore, be plain enough has hardly been realised by our lawmakers. Judges, looking at statutes, are forced to play a linguistic game guessing at the general legislative purpose and straining at semantics. In the present case we have had to reach the conclusion against the appellants by broadening the dimensions of Heydon's case ((1584) 3 Co Rep 7a : 76 ER 637), importing a 'context-purpose' teleological approach. There are many canons of statutory

construction, but the golden rule is that there are no golden rules - if we may borrow a Shavian epigram.

8. We must emphasize once more that legislative draftsmen and legislators must not confuse each other but start talking to their real audience - the people, by writing law in unmistakable and simple language.

9. Back to Section 18(2). Once a court convicts a person under Section 3 or Section 7 as in this case, it may pass orders under sub-section (1) of Section 18 without further notice to such person to show cause as required in that sub-section. Shri Mukherjee's submission is that this power of eviction is conditioned by the limitations of Section 18(1). Orders under sub-section (1) of Section 18 can, admittedly, be passed only if the brothel is within 200 yards' distance. Since, in this case, the place is beyond that distance, Shri Mukherjee argues that sub-section (2) cannot apply. The words 'pass orders under sub-section (1)' creates ambiguity which we have sought to dispel by trying to advance the remedy and suppress the evil through the interpretative methodology.

10. Shri A. K. Sen has explained - and we think rightly - that Section 3 punishes persons who keep brothels. Sub-section (3) of Section 3 lays down that notwithstanding any other law

any lease under which such premises are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

It is plain therefore that the consequences of a conviction under Section 3 is the invalidation of the lease of the premises where the brothel is run. The logical consequences must be that the occupier must be thrown out of the prostitudinal premises. This is achieved by exercise of the power under Section 18(2).

11. Section 7(1) punishes prostitution in premises within a distance of 200 yards of specified sensitive places set out therein. Section 7(2) works out a dichotomy : sub-section (2)(a) punishes the keeper of any public place who knowingly permits prostitutes to resort to such place (that is, any public place). No question of distance arises here but sub-section (2)(b) specifically mentions, as an ingredient of the offence, that the premises must be such as are referred to in sub-section (1) (that is, within 200 yard' distance). A person convicted either under Sub-section (1) or under sub-section (2)(a) or (b) of Section 7 will be covered by Section 18(2) because the latter provision empowers the court to pass orders under Section 18(1) if there is a conviction under Section 7, regardless of whether it falls under sub-section (2)(a) or (b) of that section. Moreover, if we have regard to the wholesome purpose of cleansing houses of ill-fame, it can be achieved only by a broader construction of Section 18(2).

12. This Court in *Sub-Divisional Magistrate v. Ram Kali* ((1968) 1 SCR 205 : AIR 1968 SC 1 : 1968 Cri LJ 82) held that Section 18(1) deals with one class and Section 18(2) relates to another class. Section 18(1) is a summary procedure for closing down obnoxious places of prostitution, without going through the detailed process of a criminal prosecution. It is a quick-acting defensive mechanism, calculated to extinguish the brothel and promote immediate moral sanitation, having regard to the social susceptibility of places like shrines, schools, hostels, hospitals and the like. Section 18(2) on the other hand, operates only where persons have been convicted of offences under Section 3 or Section 7. Thus the place is found to be put to prostitudinal use in a criminal trial. It stands to reason that if the purpose of extirpating the commercial vice from that venue were to be successful, the occupier must be expelled therefrom. This is precisely what has been done in the

present case. Section 18(2) operates not merely on places within the offending distance of 200 yards but in all places where the activity of prostitution has been conducted.

13. A close reading of Section 18(2) indicates that the orders under sub-section (1), referred to therein, do not, wholesale, import the substantive paragraph of Section 18(1), but only the evicting orders contained in Section 18(1), clauses (a) and (b). What is, by a process of abbreviation, imported into Section 18(2) is the decretal part of Section 18(1) to the extent it is written into Section 18(1)(a) and (b). There is some clumsiness about the drafting, as we have already stated. Even so, if the purpose is married to the meaning that we assign, the Section fulfils the social cause.

14. We are in the International Women's Year - a circumstance meaningful socially, but not relevant legally. Even so, it is time to tighten up this statute and we may permit ourselves a few concluding observations, hopefully. May be, there are other provisions of the Act which have contributed to its dismal failure in the field and the Legislature must, in the International Year of Women, protect the virtue of the weaker sex from the purchasing power of the takers of virginity who sip every flower and change every hour.

15. No nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free - free to live without sale of their young flesh the lascivious wealth or commercialising their luscious figures. India, to redeem this 'gender justice' and to prescribe prostitution whereby rich men buy poor women through houses of vice, has salved its social conscience by enacting the Act. But the law is so ill-drafted and lacunose that few who follow "the most ancient profession with world" have been frightened into virtue and the customers of wine-cum-women are catered to respectably in bars, hotels and nightclubs in sophisticated and subtle ways, especially in our cities.

16. We dismiss the appeal, upholding the power of the magistrate to order eviction when there is a conviction under Section 3 or Section 7, confident that public power vested in a public functionary for public benefit shall be used whenever conditions necessary for the exercise are present, so that a comprehensive social purpose of moral clean-up of public places is accomplished.

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