

ANDHRA PRADESH HIGH COURT

Public Prosecutor

Vs

Uttaravalli Nageswararao

(S Ahmed, JJ.)

04.09.1964

JUDGMENT

S Ahmed, JJ.

(1) The respondent herein one U. Nageswararao was charge-sheeted under Sec. 3 (1) of Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter called the Act) by the Special Police Officer and Deputy Superintendent of Police, Bandar, before the Munsif Magistrate, Gudivada in Calendar Case No. 21 of 1963. The allegations against the respondent were that he was running a brothel in house bearing Door No. 12/327; that when on 19-11-1962 at about 11-45 in the night the Special Police Officer along with the mediators made a surprise raid on the said house, he found two customers in the house in the company of prostitutes. It was stated that the respondent was also present in the house. He opened the door and the party on entering the house found two rooms in the eastern side of the house bolted from inside. When the doors were opened, P. Ws. 1 and 2 were found inside while in the other room P. Ws. 6 and 7 were found in the dishevelled state. On enquiry it was revealed by P. Ws. 1 and 6 that they had come to the girls, P.Ws. 2 and 7, and that they had paid one rupee for that purpose. Thereupon, a mahazar was drafted. The money was seized from the custody of the respondent and charge-sheet, as stated above, was laid against the accused under Sec. 3 (i) of the Act.

(2) The respondent-accused pleaded not guilty and claimed that he was running a Killy shop and was not a resident of the said shop. It was stated on his behalf that P. Ws. 1 and 6 had some altercation with him and in consequence thereof the case was foisted against him. The learned Magistrate on examining 8 witnesses on behalf of prosecution and two on the side of defence came to the conclusion that no case beyond reasonable doubt has been made out by the prosecution; and in that view, he acquitted the respondent of the charge under Security. 3. (i) of the Act. The State has now come in appeal against the said order.

(3) The learned Public Prosecutor has contended that the order of the Magistrate is unsustainable as it is merely based on the ground that the officer conducting search had only strictly complied with the provisions of Sec. 15 of the Act. Referring to the decision in the case of Radha Krishan v. State of U. P., , he has urged that though the provisions of search as contemplated under S. 13

of the Act have not been complied with only two consequences could follow therefrom (1) that the accused could resist the search being illegal and (ii) the Court would examine carefully the evidence regarding the seizure. It is therefore contended that the evidence on record could not be brushed aside, and it was sufficient to warrant conviction of the respondent under Sec. 3 (i) of the Act.

(4) The learned counsel on the other side relying on the decision in State of Rajasthan v. Rehman, has contended that as the provisions relating to search under Sec. 15 of the Act have not been complied with investigation is defective and as such the order of acquittal should not be interfered with.

(5) It is beyond controversy that the provisions of Sec. 210 has contended that as the provisions relating to search under Sec. 15 of the Act have not been complied with in the instant case. Section 15 lays down as follows :-

"(1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a woman or girl living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under Sub-sec (1) the Special Police Officer shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do."

(6) The Special Police Officer (P. W. 8) who conducted search in this case has conceded in the cross-examination that he did not record the reasons as laid down in the section and what is further surprising is that he did not assign any reasons for not doing so. Again, when he was questioned whether he tried to secure the services of a woman mediator as provided in the sub-sec. (2) to Sec. 15 of the Act., he stated that he tried to secure a woman mediator but could not do so., However, this fact was not mentioned in the diary. he again mentioned that he had asked the sub-inspector of Police to produce mediators who told him that no woman was available. he admitted that he had not served notices on any person in his attempt to secure the services of a woman mediator as provided in that Act. The Act, as stated above, is a special piece of legislation enacted with a specific purpose and as it has to deal with women and girls certain provisions of the Act are required to be strictly complied with. S. 15 is one of those provisions, it begins with the wording :'Notwithstanding anything contained in any other law for the time being in force', making it clear that even if in some other general provisions of law, there is a section which enables the police Officers to proceed with the search effect seizure, this cannot be resorted to when acting under this Act without strictly observing the procedure laid down in Sec. 15. All the directions contained in the said provisions appear to be mandatory. While the recording of reasons for proceeding without obtaining the search warrant may not be done, which is a matter of discretion, so far as the requisition of the services of the respectable inhabitants is concerned, the direction is mandatory and the Legislature by insisting on the presence of one woman mediator at the time of search has undoubtedly chosen to safeguard the interests of the

persons with whom the Act is intended to deal. The Special Police Officer therefore could not proceed with the search unless he had procured the services of two or more respectable inhabitants, one of whom should have been a woman before entering the place to be searched. The statement made by him viz., that he had asked the Sub-Inspector to produce a woman mediator cannot be deemed to be sufficient compliance with these provisions. I am, therefore, inclined to accept the finding of the lower Court that the search of the premises conducted by the Special Police Officer was vitiated.

(7) The next question is whether on this basis the entire evidence adduced by the Prosecution to substantiate the case be overlooked. In the case of , referred to earlier, the Supreme Court refused to interfere with the order of acquittal merely on the ground that the search as carried out was not in accordance with the provisions of the Code of Criminal Procedure. It is urged by the learned counsel for the respondent that if the searches when not made in accordance with the provisions are taken into account for conviction, it will defeat the very object of the legislation in imposing certain restrictions on the part of the investigating agency. The offence, if any, was brought to light by improperly conducted search and the evidence of the offence should therefore be struck down as unacceptable, more so, when the Magistrate has found that the evidence in the case is also shaky and unreliable. In the instant case, admittedly the search which has resulted in the detection of crime was not according to the provisions of Sec. 15 of the Act. Therefore I find it difficult to interfere with the order of acquittal made by the lower Court on the ground that apart from the illegality of search the data on record is sufficient to find the respondent guilty. Accordingly, I dismiss the appeal upholding the order of acquittal.

(8) Appeal dismissed.

