
(2014) 11 CAL CK 0051
In the Calcutta High Court
Case No : C.R.R. No. 3274 of 2010

Ashok Hazra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 13, 3, 4, 5, 6

Citation : (2015) 1 CHN 289

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Siladitya Sanyal and Baidurya Ghosal, for the Appellant; Subir Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Joymalya Bagchi, J.—The judgment and order dated 29.06.2010 passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Lalbagh, Murshidabad in S.S.L. No. 44/07 - S.T. No. 11 of February 2008 - G.R. 764/04, T.R. 314/05 acquitting the respondents for commission of offence punishable under section 3/4/5/6/7 of the Prevention of Immoral Traffic Act, 1956. The prosecution case is to the effect that opposite party No. 6 runs a hotel named and styled as Arnapurna Hotel situated at Ajimganj City, near Ajimganj Railway Station, Police Station - Jiaganj, District - Murshidabad. It is alleged that local people had made complaints against such immoral activities of opposite party No. 6. On the basis of such complaint, raid was conducted at the premises by Sri Bhaskar Goswami, C.I. of Police, Lalbagh, Murshidabad on 12.01.2004 at about 14:30 hours along with other Officers attached to Jiaganj Police Station. In course of raid it was found that opposite party Nos. 2, 3 and 4 had been procured by the opposite party No. 6 for the purpose of carrying on prostitution in the said Hotel and the opposite party Nos. 4 and 5 were found to be present in the said Hotel as customers. The raiding party arrested the aforesaid persons, seized incriminating articles from the Hotel and on the basis of the written complaint of Bhaskar

Goswami, C.I. of Police, Lalbagh, Murshidabad Jiaganj Police Station Case No. 63 of 2004 dated 13.10.2004 under sections 3/4/5/6/7 of the Prevention of Immoral Traffic Act, 1956 was registered for investigation.

2. In conclusion of investigation, charge-sheet being Charge-sheet No. 83/2004 dated 26.12.2004 under sections 3/4/5/6/7 of the Prevention of Immoral Traffic Act, 1956 (hereinafter referred to as the Act of 1956) was submitted before the Court of the learned Sub-Divisional Judicial Magistrate, Lalbagh, Murshidabad. The case was committed to the Court of Sessions and transferred to the Court of learned Additional Sessions Judge, 3rd Fast Track Court, Lalbagh, Murshidabad for trial and disposal.

3. Charges were framed under sections 3/4/5/6/7 of the Act of 1956 against the opposite party Nos. 2 to 6 herein. The opposite party Nos. 2 to 6 pleaded not guilty and claimed to be tried. In course of trial, the prosecution examined as many as ten witnesses and exhibited a number of documents. The Trial Court, however, by the impugned judgment and order acquitted the opposite party Nos. 2 to 6 herein of the charges, as aforesaid.

4. Mr. Sanyal, learned counsel appearing for the petitioner submitted that the order of acquittal was patently illegal, perverse and contrary to law, inasmuch as, as the prosecution case was thrown out on the ground that the Investigating Officer Debabrata Duboy, Inspector-of-Police (PW-10) was not competent to investigate offences under the Act of 1956 in view of section 13 of the said Act.

5. Mr. Banerjee, learned Additional Public Prosecutor, High Court, Calcutta supported such submission and submitted that such finding of the learned Court below was incorrect in view of the Notification dated 27th September, 1996 issued on behalf of the Government of India in exercise of power under section 13 of the aforesaid Act empowering all Police officers not below the rank of Inspector-of-Police as Special Police Officers to investigate offences under the said Act.

6. In spite of notice, nobody appears on behalf of the opposite parties.

7. I have examined the materials on record including the impugned judgment. Although there is a general discussion of the evidence on record, the issue which primarily weighed with the learned Trial Judge in acquitting the accused persons was that investigation was not conducted by a competent agency in the instant case. Such proposition of law is contrary to the ratio of the Apex Court in the case of H.N. Rishbud and Inder Singh Vs. The State of Delhi, .

8. In the said report the Apex Court held that the illegality in the course of investigation would not vitiate the trial until and unless the same has occasioned miscarriage of justice.

9. That apart the State has placed on record a Notification being No. 4466 SW O SW 25/96 dated 27th September, 1996 whereby the State of West Bengal has empowered all Police Officers not below the rank of Inspector of Police under the

West Bengal Police and Calcutta Police Authority, to act as Special Police Officers in their respective local jurisdiction for dealing with offences under the Immoral Traffic (Prevention) Act, 1956.

For better appreciation the aforesaid Notification is set out below:

"GOVERNMENT OF WEST BENGAL DEPARTMENT OF SOCIAL WELFARE WRITERS"
BUILDINGS, CALCUTTA NO. 4466 SW O SW 25/96 DATED CALCUTTA 27TH
SEPTEMBER, 1996

NOTIFICATION

In exercise of the power conferred by sub-section (1) of section 13 of the Immoral Traffic (Prevention) Act, 1956, the Governor is pleased hereby to appoint all officers not below the rank of Inspector of Police under the West Bengal Police and Calcutta Police Authority, to act as Special Police Officers in their respective local jurisdiction for dealing with offences under the Immoral Traffic (Prevention) Act, 1956 with immediate effect.

This issues in cancellation of all previous order, issued in this respect.

By order of the Governor. Sri S. Kar Jt. Secy. to the Govt. of West Bengal"

10. Admittedly, the Investigating Officer (PW-10) is an Inspector of Police attached to West Bengal Police and in view of the aforesaid Notification it cannot, therefore, be disputed that he is a special Police Officer empowered to investigate offences under the aforesaid law.

11. The very substratum on which the opposite parties have been acquitted is therefore contrary to law and is liable to be set aside. The impugned order of acquittal is accordingly set aside.

12. The matter is remanded before the Trial Court for retrial and the Court is directed to proceed with the hearing of the case on the basis of evidence adduced on record and concluded the same within three months from the date of communication of this order.

13. The revision petition is accordingly allowed.

14. Department is directed to send down Lower Court record at once along with a copy of this order for necessary action. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.