

(2011) 08 SC CK 0103
In the Supreme Court Of India
Case No : Criminal Appeal No. 135 of 2010

Budhadev Karmaskar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 3 ACR 3003 : AIR 2011 SC 2636 : (2011) AIRSCW 5233 : (2011) AIRSCW 1303 : (2011) 8 JT 289 : (2011) 3 RCR(Criminal) 754 : (2011) 8 SCALE 155 : (2011) 9 SCR 680 : (2011) 6 Supreme 6 : (2011) 4 UJ 2675

Hon'ble Judges : Markandey Katju, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : P.P. Malhotra, ASG, Pradip Ghosh, Jayant Bhushan, T.S. Doabia, Ashok Bhan, Ratnakar Dash, I. Venkatanarayana, R. Sundaravaradan, A. Mariarputham, AG, Manish Singhvi, Shail Kr. Dwivedi, Manjit Singh, AAG, Pijush K. Roy, Reena George, Gautam Talukdar, Lajja Ram, Gaurav Sharma, D.S. Mahra, Sushma Suri, Sadhana Sandhu, Mohd. Khairati, Irshad Ahmad, Vijay Verma, Anitha Shenoy, Ashutosh Sharma, Alka Sinha, Anuvrat Sharma, D. Mahesh Babu, Ramesh Allanki, V. Pattabhi Ram, Savita Dhanda, Ranjan Mozumbar, for Corporate Law Group, Anil Srivastava, Rituraj Biswas, Gopal Singh, Manish Kumar, Anjani Aiyagari, S. wasim A. Quadiri, Anil Katiyar, Hemantika Wahi, Suveni Banerjee, Ashwini Kumar, Tarjit Singh, Kamal Mohan Gupta, Abhishek Sood, Rohit Kr. Singh, Sunil Fernandes, Astha Sharma, P.V. Dinesh, Jogy Scaria, Sanjay Kharde, Kh. Nobin Singh, Balaji Srinivasan, Radha Shyam Jena, Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey, Mohit Mudgil, Aruna Mathur, Avneesh Arputham, Yusuf Khan, Megha Gaur, Arputham, Aruna and Co., Aniruddha P. Mayee, Abhijit Sengupta, B.P. Yadav, Anima Kujur, Anil K. Jha, Dharmendra Kr. Sinha, Chhaya Kumari, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Savita Singh, Anand Grover, Tripti Tandon, Shivangi Rai, Amritananda Chakravorty, Shefali Malhotra, Prakash Kumar Singh, Ravi Kant, A. Subhashini, Aishwarya Bhati, C.D. Singh, K.N. Madhusoodhanan, M.T. George, Subramonium Prasad, Sunil Kumar Singh, Mukti Singh, Jatinder Kr. Bhatia, Manpreet Sing Doabia, Kiran Bhardwaj, Edward Belho, A. Athuimei R. Naga, K. Inatoli Sema, Nimshim Voshum and Ranjan Mukherjee, for the Appellant;

Final Decision : Allowed

Judgement

Pinha tha daam-e-sakht qareeb aashiyaan ke Udhne hi na paaye the ki giraftaar hum hue

Mirza Ghalib

1. This exercise was initiated by us by our order dated 14th February 2011. By that order we dismissed the appeal of the Appellant, who was convicted for murdering a sex worker in a red light area in Kolkata by battering her head repeatedly against the wall and the floor of a room. Having dismissed the appeal we suo motu converted the case into a PIL by the same order in order to address the problems of sex workers in the country.

2. In our order dated 14th February, 2011 we observed:

This is a case of brutal murder of a sex worker. Sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution.

In the novels and stories of the great Bengali writer Sharat Chandra Chattopadhyaya, many prostitutes have been shown to be women of very high character, e.g., Rajyalakshmi in 'Shrikant', Chandramukhi in 'Devdas', etc.

The plight of prostitutes has been depicted by the great Urdu poet Sahil Ludhianvi in his poem 'Chakle' which has been sung in the Hindi film Pyasa "Jineh Naaz Hai Hind Par wo kahan hain" (simplified version of the verse 'Sana Khwan-e-taqdees-e-Mashrik Kahan Hain').

We may also refer to the character Sonya Marmelodova in Dostoyevsky's famous novel 'Crime and Punishment'. Sonya is depicted as a girl who sacrifices her body to earn some bread for her impoverished family.

Reference may also be made to Amrapali, who was a contemporary of Lord Buddha

3. We further observed:

Although we have dismissed this Appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to

earn her livelihood by such vocational training and skill instead of by selling her body.

Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself

4. Subsequently by another order we constituted a panel headed by Mr. Pradip Ghosh, Senior Advocate as the Chairman and including Mr. Jayant Bhushan, Senior Advocate, Durbar Mahila Samanwaya Committee (DMSC), Usha Multipurpose Cooperative Society (UMCS) and Roshni through its founder Ms. Saima Hasan. We also directed the Central Government to provide some accommodation as well as infrastructure, staff etc. to the panel, and grant it adequate funds.

5. Today, an interim report has been submitted to us by the panel stating that the panel held its first meeting on 25th July, 2011 at 04.30 P.M. and discussed various aspects of the problems relating to sex workers. The report shall be taken on record.

6. We have perused the report. It shows that the panel has set about the task assigned to it in right earnest.

7. The report has prayed for directions to the Central Government to make necessary funds available for holding workshops/meetings to be attended by experts, resource persons, organizations etc. who may be invited by the panel for this purpose and to arrange their travel by air/rail to and fro Delhi, and also to make suitable arrangements for their accommodation etc. Funds may also be made available to the panel so that the members can educate the concerned people and also to visit other three metropolitan cities i.e. Kolkata, Mumbai and Chennai and also other cities/towns. Funds are also required for advertisements in newspapers and T.V. inviting responses from social organizations and interested individuals who may send their suggestions/comments and also for the purpose of printing and publications, as may be necessary.

8. We direct the Central and the State Governments to provide funds as prayed for by the panel in its report after discussions with the Chairman of the panel Mr. Pradip Ghosh, Senior Advocate and other members.

9. In paragraph 10 of the report it has been stated that the Central Government has assured that they will arrange a place for the meetings of the Panel with necessary infrastructure, computer, staff etc. The Central Government should also look around for a permanent office accommodation for the panel as that will

be necessary sooner or later for the proper functioning of the Panel.

10. We have noted that some of the members of the panel are from Kolkata and Delhi, but there is no representation from Mumbai and Chennai. Since we had directed that we shall first take up the problems of sex workers in the four metropolitan cities, i.e. Delhi, Kolkata, Mumbai and Chennai, we suggest to the Chairman of the panel to co-opt some suitable NGOs/social activists from Mumbai and Chennai also in this connection.

11. We again reiterate that this exercise is because we are of the opinion that sex workers are also human beings and hence they are entitled to a life of dignity. It has been well-settled by a series of decisions of this Court that the word 'life' in Article 21 of the Constitution means a life of dignity and not just an animal life. We are of the opinion that sex workers obviously cannot lead a life of dignity as long as they remain sex workers.

12. Sex among human beings is different from sex among animals. Sex in humans has a cultural aspect to it also, and is not just a physical act. A sex worker who has to surrender her body to a man for money obviously is not leading a life of dignity. Ordinarily, no woman will willingly surrender her body to a man unless she loves and respects him. A sex worker is obviously not surrendering her body to a man because she loves and respect him, but just for sheer survival. As Nancy says in Charles Dicken's novel 'Oliver Twist', "you adapt or you die".

13. Apart from that, sex workers are always in danger of getting sexually transmitted diseases (STD), and they are often abused and beaten by the proprietors of the brothel and others who give them a pittance out of her earnings. A woman becomes a sex worker not because she enjoys it but due to abject poverty. One estimate suggests that there are 3 million sex workers in India, many even from Nepal, Bangladesh, and even the former Soviet Union. This is due to massive poverty in the country, and abroad.

14. Our effort in this exercise is to educate the public and inform them that sex workers are not bad persons, but they are unfortunate girls who have been forced to go into this flesh trade due to terrible poverty. Hence society should not look down upon the sex workers but should have sympathy with them. In fact, in the novels of the great Bengali writer Sharat Chandra Chattopadhyay it has been shown that many of the sex workers were women of very high character, e.g. Rajyalakshmi, Chandramukhi, etc. and the same has been shown in the novels of many European writers. The Russian writer Dostoyevsky's novel 'Crime & Punishment' has shown Sonia Marmeladova as a woman of high character who became a sex worker to feed her starving family. Similarly, in Charles Dicken's novel 'Oliver Twist', the sex worker Nancy is shown to be a girl of high character who sacrifices her life to save Oliver. In Victor Hugo's famous novel 'Les Miserables', Fantine sacrifices her hair and teeth to provide for her daughter Cosette. Martha in 'David Copperfield' is also depicted as a woman of noble heart.

15. We are of the opinion that if sex workers are given proper technical training they will be able to come out of sex work and instead earn their livelihood through their technical skills instead of by selling their bodies. That will enable them to live a life of dignity.

16. An impleadment application praying for impleadment in this case has been filed. We are of the opinion that instead of applying for impleadment in this case, the applicant should approach the Panel constituted by us and give whatever assistance the applicant wishes to give to the Panel. With these observations, the impleadment application is disposed of.

17. Learned Counsel appearing for the State of Uttarakhand has stated that he will file a comprehensive affidavit on behalf of the State within two weeks. He may do so.

18. We may mention here that we are not satisfied with the affidavits already filed by the State Governments before us. Their contents are vague and too general. We had expected the State Governments to come forward with specific schemes for giving technical training to sex workers but that has not been done. Hence, we direct that the Secretaries, Social Welfare Departments of the State Governments and the Central Government to meet the Panel constituted by us whenever the Chairman of the Panel so desires so as to discuss how proper schemes in the spirit of our orders can be prepared.

19. We are of the opinion that the States should not only come out with schemes indicating therein rehabilitation of the sex workers but they should also demonstrate their commitment to the cause by coming out with some concrete results, at least in phases. So by the next date we expect the State counsels to come out with some effective feedback whether at least a few sex workers have been offered any alternative employment, in case they were willing for rehabilitation. We also leave it to the Chairman of the Panel constituted by us to come out with some suggestions in what way the sex workers through the State Governments and the metro cities can come out with effective results in this regard and by way of illustration at least they must come out with report of rehabilitation of at least some of the sex workers in each of the States. We make it clear that any rehabilitation of the sex workers will not be coercive in any manner and it shall be voluntary on the part of the sex workers.

20. The Chairman of the Panel with the assistance of the NGOs can provide a list by the next date at least of those sex workers who are living under dire circumstances and are willing for rehabilitation. We are informed that some of the NGOs have a list of figures and localities of such sex workers who are immediately willing for rehabilitation and want to get out of the flesh trade.

21. We are fully conscious of the fact that simply by our orders the sex workers in our country will not be rehabilitated immediately. It will take a long time, but we have to work patiently in this direction. What we have done in this case is to present the situation of sex workers in the country in the correct light, so as to

educate the public. It is ultimately the people of the country, particularly the young people, who by their idealism and patriotism can solve the massive problems of sex workers. We, therefore, particularly appeal to the youth of the country to contact the members of the panel and to offer their services in a manner which the panel may require so that the sex workers can be uplifted from their present degraded condition. They may contact the panel at the email address: panelonsexworkers@gmail.com.

22. List the case again before this Bench on 24.08.2011 at 10.30 a.m. by which date the Panel appointed by us should submit another report of the progress made.