
(1964) 01 AHC CK 0034
In the Allahabad High Court

Gita and Others

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 13

Citation : (1965) 35 AWR 564 : (1965) CriLJ 161

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.D. Seth, J.—This is a petition under Article 226 of the Constitution. All the 35 petitioners are residents of Mohalla Mir Ganj in the city of Allahabad. According to the petitioners Sri Bhupendra Singh, Additional Deputy Superintendent of Police, Allahabad City on 27th August 1963, took into custody all the petitioners along with some other women for an alleged breach of Section 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter called the Act). Sri Bhupendra Singh lodged a first information report the same day. The petitioners were produced before the City Magistrate, Allahabad, on 28th August 1963 along with a report of Sri Bhupendra Singh. The petitioners were allowed bail by the City Magistrate. The raid was organised by Sri Bhupendra Singh after he had received information that in Mohalla Mir Ganj prostitutes sit in a public place in such a manner that they can be seen or heard from any public place and that they, by words, gesture and wilful exposure of their persons, tempt persons for the purpose of prostitution and act in such a manner as to cause obstruction and annoyance to the per- , sons living nearby or passing through that Mohalla and thus commit an offence against public decency, Sri Bhupendra Singh claimed to have acted and investigated the case as a special police officer within the meaning of Section 13 of the Act. No charge-sheet had been submitted by Sri Bhupendra Singh till the date of the filing of this petition, The petitioners filed this petition challenging their arrest, investigation and all the

proceedings against them carried out by Sri Bhupendra Singh and have prayed that certiorari be issued quashing the entire proceedings carried out by Sri Bhupendra Singh against the petitioners including the report submitted, to the Additional City Magistrate and the first information report lodged by him. It has also been prayed that Sri Bhupendra Singh be commanded not to submit the charge-sheet against the petitioners for an offence u/s 8 of the Act. A further prayer has been made that Section 8 (a) of the Act and the notification issued by the State Government under Sec 13 (1) of the Act on 29th September 1962 be declared ultra vires and invalid.

2. A counter-affidavit has been filed by Sri Bhupendra Singh and a rejoinder-affidavit has been filed on behalf of the petitioners.

3. I have heard Sri K. L. Grover the learned Counsel for the petitioners and Sri Kamal Narain Singh, the learned Junior Standing Counsel appearing for the opposite parties.

4. The learned Counsel for the petitioners submitted that the notification issued by the State Government on 29th September 1962, without appointing special police officers by name, is against the provisions of Section 13 (1) of the Act and since Sri Bhupendra Singh was not appointed a special police officer within the meaning of Section 13(1) of the Act by name he could not deal with the offences under the Act. The learned Counsel also submitted that Sri Bhupendra Singh was not a Deputy Superintendent of Police incharge of the city police circle of Allahabad and as such could not be vested with the powers of a special police officer in that area to deal with offences under the Act. He also urged that Section 13 of the Act does not empower the State Government to appoint two special police officers in the same area with concurrent jurisdiction. It was, therefore, contended that the first information report and the report made by Sri Bhupendra Singh to the Additional City Magistrate are Illegal and without jurisdiction. It may be noted that no arguments were advanced by Sri Grover regarding Section 8(a) and Section 13(1) of the Act being ultra vires and Invalid.

5. Sri Kamal Narain Singh, on the other hand, contended that Sri Bhupendra Singh is the Circle Officer (city) Allahabad for purposes of dealing with crimes and fulfils the qualifications required to be appointed a special police officer u/s 13 of the Act and the notification dated 29th September 1962 Issued by the State Government. He, therefore, submitted that Sri Bhupendra Singh was fully authorised to exercise the powers of a special police officer under the notification of the State Government and had, therefore, rightly arrested the petitioners and investigated the case against them, Sri Kamal Narain Singh further submitted that in any case if Sri Bhupendra Singh is not taken to be a special police officer within the meaning of Section 13 of the Act he could assist Sri Jagan Nath Singh, Deputy Superintendent of Police (City) Allahabad, who was his senior officer and had in fact acted with his consultation and under his direction. According to the learned Counsel for the State wherever in the Act a singular has been used it should be deemed to include the plural u/s 13(2) of the General Clauses Act,

1897. He also submitted that in any case no prejudice has been caused to the petitioners and the proceedings pending before the City Magistrate are not vitiated and cannot be quashed.

6. The Act was passed by the Parliament in pursuance of the International Convention signed at New York on the 9th. day of May, 1950, for the suppression of immoral traffic in woman and girls. The purpose of the Act was not to render prostitution per se a criminal offence or to punish a woman merely because she prostitutes herself but to abolish traffic in women and girls for the purpose of prostitution as an organised means of living. Sub-section (1) of Section 2 of the Act defines a special police officer as "a police officer appointed by or on behalf of the State Government to be incharge of police duties within a specified area for the purpose of this Act". Section 3 of the Act provides punishment for keeping a brothel or allowing premises to be used as a brothel. Section 4 provides for punishment for living on the earnings of prostitution. Section 6 provides punishment for detaining a woman or girl in premises where prostitution is carried on. These provisions clearly show that the Act is a penal statute and affects the liberty of the subject,

7. Section 13 of the Act reads as follows:

(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of-

(a) an Assistant Commissioner of Police in the Presidency towns of Madras and Calcutta;

(b) a Superintendent of Police in the Presidency town of Bombay; and

(c) A Deputy Superintendent of Police elsewhere.

(3) For the efficient discharge of his functions in relation to offences under this Act-

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and

(b) the State Government may associate with the Special Police Officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

8. In exercise of the powers under Sub-section (2) of Section 13 of the Act the State Government issued a notification on September 29, 1962 to the following effect.

In exercise of the powers under Sub-section (2) of Section 13 of the Suppression of Immoral Traffic to Women and Girls Act, 1956 (Act No. 104 of 1956) and in supersession of all previous notifications on the subject, the Governor of Uttar Pradesh is pleased to appoint all the Superintendents and Assistant Deputy Superintendents of Police, incharge of police circles in the following districts as Special Police Officers within their respective districts and dealing with the offences under the said Act.

(1) ... (2) Allahabad ... (3) ----

9. This notification clearly shows that only those Deputy Superintendents of Police who are incharge of police circles in Allahabad can act as special police officers for dealing with the offences under the Act.

10. Page 480 of the Civil List Part I for Uttar Pradesh corrected upto July 1, 1962, shows that the Deputy Superintendent of Police, City, Allahabad, gets a special pay of Rs. 75/- which is attached to his post. At page 493 of the same Civil List the name of Sri Jagan Nath Singh appears as the Deputy Superintendent of Police (City) Allahabad. It is mentioned after his name that his pay is Rs. 640/- per month and that he gets a special allowance of Rs. 757/- per month. Sri Jagan Nath Singh was appointed on 5th May 1932 and was con. firmed the same day. At page 498 of the same Civil List the name of Sri Bhupendra Singh appears as the Additional Deputy Superintendent of Police (City) Allahabad, His pay is also Rs. 460/- per month but he draws no special pay. He was appointed on 23rd January 1956 and was confirmed on 23rd January 1958. It is thus clear that Sri Jagan Nath Singh is senior to Sri Bhupendra Singh. It is not possible to conceive two Deputy Superintendents of Police as incharge of a police circle. Sri Jagan Nath Singh being senior to Sri Bhupendra Singh must be taken to be incharge of police circle, Allahabad City,

11. The argument of Sri Kamal Narain Singh that u/s 13(2) of the General Clauses Act, 1897 wherever singular has been used in the Act it should be assumed to include plural does not seem to be well founded. Section 13 of the General Clauses Act, 1897 is as follows;-

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context-

- (1) Words importing the masculine gender shall be taken to include females; and
- (2) words in the singular shall include the plural and vice versa.

12. The words "unless there is anything repugnant in the subject or context" appearing In this section are important. Therefore, the Interpretation of the word "a" depends upon the context in which it has been used in Section 13 of the Act.

13. Sub-section (1) of Section 13 of the Act provides that for each area there shall be a special police officer appointed by the State Government for dealing with offences under the Act in that area. Sub-section (2) of Section 13 provides

that the special police officer appointed by the State Government shall not be below the rank of an Assistant Commissioner of Police in the Presidency towns of Madras and Calcutta, a Superintendent of Police in the Presidency town of Bombay; and a Deputy Superintendent of Police elsewhere. The word "the" has been used before the words "special police officer" in Sub-section (2) of Section 13 of the Act. In fact the word "the" has been used in Sub-section (3) of Section 13 of the Act before the words "special Police Officer of an area". In Section 14 of the Act also the word "the" has been used before the words special police officer". Sub-section (3) of Section 13 of the Act provides that the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area to advise him on questions of general importance regarding the working of the Act.

If the Intention of the legislature had been that the word "a" in Sub-section (1) of Section 13 of the Act may be interpreted in plural it would not have used the word "the" before the words "special police officer" in Sections 13 and 14 of the Act. The fact that the Act empowered the State Government to associate with the special police officer a non-official advisory body to advise him on questions of general importance regarding the working of the Act also shows that the legislature contemplated the interpretation of the word "a" in Sub-section (1) of Section 13 of the Act to be in the singular and not in the plural. In my opinion, the scheme of the Act points out to the appointment of only one special police officer for each area dealing with offences under the Act, It has already been mentioned above that the Act is a penal statute and affects the liberty of the subject. If two possible and reasonable constructions can be put upon a provision in a penal statute the court must lean towards the construction which favours the subject.

It Is well established that a penal statute must be construed strictly and according to its plain, natural and grammatical meaning. Strict construction means that benefit of doubt must be given to the subject. In my view, therefore, the word "a" In Sub-section (1) of Section 13 of the Act can be Interpreted only in the singular and not in the plural. It follows, therefore, that the State Government could not appoint more than one special police officer in an area for dealing with offences under the Act In that area. Sri Bhupendra Singh, not being incharge of police circle city Allahabad, could not, therefore, start proceedings under the Act against the petitioners,

14. I also do not agree with the contention of Sri Kamal Narain Singh that no prejudice has been caused to the petitioners. The petitioners were, in fact, arrested by Sri Bhupendra Singh and were produced before the City Magistrate, Allahabad. It Is inconceivable to hold that the arrest did not cause to the petitioners harassment, physical trouble and mental anxiety.

15. The argument of Sri Kamal Narain Singh that in any case Sri Bhupendra Singh acted in consultation with and under the direction of Sri Jagan Nath Singh,

Deputy Superintendent of Police, City, Allahabad, Is also not well founded. Section 3.4 of the Act is relevant In this connection, It says:

Notwithstanding anything contained in the Cr. P. C., any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code:

Provided that, notwithstanding anything contained in that Code,-

(i) arrest without warrant may be made only by the Special Police Officer or under his direction or guidance, or subject to his prior approval;

(ii) When the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for on offence under this Act, he shall give that subordinate officer an order in writing specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

(iii)

16. It is true that Sri Bhupendra Singh could act in consultation with and under the direction of Sri Jagan Nath Singh but it is clear from Section 14 of the Act that before he could arrest the petitioners without warrant otherwise than in the presence of Sri Jagan Nath Singh it was necessary for him to take an order in writing from Sri Jagan Nath Singh specifying the person to be arrested and the offence for which the arrest was being made. It was also necessary for Sri Bhupendra Singh before arresting the petitioners to inform them of the substance of the order and on being required by them to show them the order. No averment has been made in the counter-affidavit of Sri Bhupendra Singh that he obtained any order in writing specifying the persons to be arrested from Sri Jagan Nath Singh.

17. It is thus clear that only a special police officer appointed by the State Government u/s 13 of the Act could investigate the case against the petitioners and arrest them and that Sri Bhupendra Singh, not being incharge of the police circle city, Allahabad, could not be appointed a special police officer within the meaning of Section 13 of the Act and, therefore, could not investigate the case against the petitioners.

18. I also do not agree with the contention of Sri Kamal Narain Singh that even if Sri Bhupendra Singh was not competent to take action against the petitioners the charge-sheet submitted by him could not be quashed and the proceedings pending before the City Magistrate, Allahabad are not vitiated. It has been laid down by the Supreme Court in Delhi Administration Vs. Ram Singh, that:

The entire police duties in connection with the purposes of the Act within a certain area have been put in the charge of a special police officer. There must be

a definite purpose behind the provision of appointing a police officer in charge of the police duties within a specified area for the purpose of this Act. If the ordinary police can also perform the police duties for the purposes of the Act, there can be no special reason for making the provision for the appointment of a special police officer. The expression "police duties" will include all the functions of the police in connection with the purpose of the Act and in the special context of the Act they will include the detection, prevention and investigation of offences and the other duties which have been specially imposed on them under the Act.

The Supreme Court also laid down that : "The special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable offences."

19. The report made by Sri Bhupendra Singh in the present case was not made by him as a special police officer appointed within the meaning of Section 13 of the Act. The City Magistrate, therefore, could not take cognizance of the report as it was not made by a special police officer appointed by the State Government for an area for dealing with offences under the Act in that area. Sri Bhupendra Singh, being an ordinary police officer, was not authorised to submit a report u/s 173(1) Cr. P. C. in respect of an offence under the Act. It, therefore, follows that if he was not competent to submit a report the City Magistrate could not take cognizance of that report and could not proceed with the trial of the case against the petitioners which had been started on the report made by Sri Bhupendra Singh. I am fortified in the view that I am taking by a decision of my brother D. S. Mathur in Smt. Tara v. The State, in Cri. Revn. No. 120 of 1963, D/. 21-10-1963 (All). The arrest of the petitioners by Sri Bhupendra Singh and the investigation of the case by him were, in my opinion, illegal and the proceedings started on the basis of the report made to the City Magistrate by Sri Bhupendra Singh and the first information report lodged by him must, therefore, be set aside.

20. For the reasons mentioned above I allow this petition with costs and quash the entire proceedings carried out by Sri Bhupendra Singh against the petitioners including the report dated 27th August 1963 made to the Additional City Magistrate and the first information report lodged by him on 27th August 1963. I also quash the charge sheet submitted by Sri Bhupendra Singh against the petitioners and direct the City Magistrate, Allahabad not to proceed with the case against the petitioners.