
(2009) 07 SC CK 0028

In the Supreme Court Of India

Case No : Criminal Appeal No. 1373 of 2009 (Arising out of SLP (Criminal) No. 2585 of 2006)

Guria, Swayam Sevi Sansthan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 5(1), 6
Penal Code, 1860 (IPC) — Section 117, 323, 366A, 373, 504

Citation : (2009) 2 ALD(Cri) 555 : (2010) CriLJ 1433 : (2009) 14 JT 37 : (2009) 2 OLR 537 : (2009) 15 SCC 75 : (2009) 11 SCR 761

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Aparna Bhat, P. Ramesh Kumar, Gopal Krishna and Madhulika Mohta, for the Appellant; S.R. Singh Sunita Gautam, Shrish Kr. Mishra, Pramod Swarup, Pooja, Praveen Swarup and B.D. Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. Appellant is a Non-Governmental Organization. It came to learn that some children had been detained in the "red light area" at Varanasi. It approached the police for their rescue. More than thirty young girls and children were rescued. A complaint was filed by the appellant in respect thereof.

3. The investigating officer recorded the statement of the girls and on the basis thereof came to the conclusion that many more persons were involved in the racket. Some of them were arrested.

4. The Investigating Officer upon completion of the investigation filed a charge sheet under Sections 5, 6 and 9 of the Immoral Traffic (Prevention) Act, 1956 (for short "the Act") and Sections 323, 504, 506, 117, 366A and 373 of the Indian Penal Code against 23 persons. Another charge sheet was filed under

Sections 3, 5, 6, 7 and 9 of the Act and Sections 323, 504 and 506 of the Indian Penal Code against 13 persons.

5. The respondents who were not named in the First Information Report filed applications for grant of bail before the learned Sessions Judge. The said bail applications were opposed by the Assistant District Government Counsel contending that the private respondents had been purchasing girls for the purpose of facilitating immoral traffic. The learned Sessions Judge rejected the said applications for bail, inter alia, stating:

...It is prima facie evident from the investigation carried out in this manner that these people bring the customers to get indulged in forceful immoral traffic with the minor girls and recover the charges in lieu thereof and have made their main business and brought the minor girls at the said place on having purchased them. In this reference only on having conducted the raid by the police and other social service institutions on the stated date 31 minor girls have been recovered from the houses of Rahmat, Tulsi, etc. Therefore, commissioning of the offence under Immoral Traffic (Prevention) Act by these people becomes evident. From the said acts of the applicants/ agents instigates to commit the said offence and these people enhance the immoral traffic of prostitution which is the act against the society. In case the applicants are released, these people would again indulge in these acts because they have no other business. As far as the question of Sheikh Mohammad, applicant is a Tempo driver, is concerned, no evidence has been produced on his behalf. After considering all the facts and circumstances of the case in my opinion no proper ground is found to release the accused persons on bail. Therefore, all the above-stated four bail applications submitted by the applicants/ accused are rejected.

6. The High Court, however, by reason of the impugned judgment, allowed the said applications for bail on furnishing personal bonds with two sureties each of the like amount to the satisfaction of the Chief Judicial Magistrate, stating:

...It is pertinent to mention that in the statement of the aforesaid witnesses though the name of some of the applicants emerged but no specific role has been assigned to them nor there is any description of their activities in the statement of the witnesses recorded u/s 161 Cr.P.C. Moreover, no statement of these witnesses was got recorded u/s 164 Cr.P.C. which could give weight to their testimony. There is no specific evidence regarding inducing or taking a specific person for the sake of the prostitution.

Besides that some legal pleas were also taken, i.e., search of the premises can be made by a special police officer which is very relevant for the purpose of bail.

In the circumstances, I am of the opinion, that the applicants deserve to bail.

7. Ms. Aparna Bhat, learned Counsel appearing on behalf of the appellant, would contend that the girls who were victims had wrongly been made accused and in that view of the matter as also otherwise the High Court committed a serious

error in granting bail inter alia on the premise that they had not been identified.

8. Mr. S.R. Singh, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend that five different cases are pending trial and only in one of them a judgment of conviction has been recorded.

9. The Act was enacted in pursuance of the International Convention signed at New York on the 9th day of May, 1950 for the prevention of immoral traffic. It is unfortunate that the Investigating Officers and the Courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand, and the persons who have been organizing such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences thereunder. The Legislature as also the Executive have also failed to draw a well-thought out plan for rehabilitation of the rescued children in the society by bringing in suitable legislations or schemes. The victims of immoral trafficking, most of whom are minor or young girls, are let off on bail. They again in most of the cases are forced to go back to the brothels from where they have been recovered and are subjected to prostitution again at the instance of the same persons. Bails are also granted to other accused who are arrested from the brothels without bearing any distinction in mind as to whether they work from behind or may be held to be guilty of offences of higher magnitude.

10. We may place on record that whereas u/s 3 of the Act, punishment of three years rigorous imprisonment is provided for keeping a brothel or allowing premises to be used as a brothel, u/s 4 punishment of not less than seven years and not more than ten years is provided for living on the earning of prostitution. Section 5 relating to offences for procuring, inducing or taking person for the sake of prostitution, provides for punishment with rigorous imprisonment for a term of not less than three years and not more than seven years or if any offence u/s 5(1)(d) is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years.

Section 6 of the Act involving detaining a person in the premises where prostitution is carried out provides for imprisonment for life.

11. The question as regards grant of bail, therefore, should be considered having regard to the gravity of the offence wherewith the accused had been charged. The High Court, therefore, in our opinion, was not correct in dealing with the matter in such a cursory manner.

The High Court has also gone wrong in recording that the statements of the girls have not been recorded u/s 164 of the Code of Criminal Procedure, as the same was not necessary.

12. Our attention was drawn on a decision of this Court in *Puran v. Rambilas and Another* [(2001) 6 SCC 338] wherein it has inter alia been held that one of the grounds for cancellation of bail would be where material evidence brought on

record have been ignored and that too without any reasons. We respectfully agree with the said observation.

13. We, however, keeping in view the peculiar facts and circumstances of this case, are of the opinion that as the private respondents have been granted bail long time back and in some cases trials have also been concluded, it would not be proper on our part to cancel the bail at this stage. We, however, would place on record that in a case of this nature, the High Court should have dealt the matter cautiously. The appeal is dismissed with the aforementioned observations.