

(1997) 04 AHC CK 0041

In the Allahabad High Court

Case No : Crl Miscellaneous Writ Petition No. 26396 of 1994

Kashi Nritya Evam Lalit Kala Sansthan

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 22
Immoral Traffic (Prevention) Act, 1956 — Section 16, 20

Citation : (1997) 21 ACR 615

Hon'ble Judges : N.S. Gupta, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Kailash Nath Tripathi, for the Appellant;

Judgement

Binod Kumar Roy and N.S. Gupta, JJ.—The Petitioner Kashi Nritya Evam Lalit Kala Sansthan has come up with a prayer to quash the order dated 16th July, 1994 passed by the District Magistrate, Varanasi (Respondent No. 1) transferring the entire cases of his district registered under the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the Act) to the City Magistrate, Varanasi (Respondent No. 2) for expeditious disposal, superseding all earlier orders in view of the administrative practical difficulties of various types.

2. The Petitioner asserts inter alia that it is a body of singing and dancing girls registered under the Societies Registration Act; that under the provisions of the Act only the following Magistrates namely Metropolitan Magistrate, Judicial Magistrate of the first class, District Magistrate, and Sub-Divisional Magistrate have jurisdiction to hold trial whereas the City Magistrate has no jurisdiction to hold; that the Rescue Officer (Respondent No. 3) demanded heavy money from the members of the Petitioner or in default threatened them to get them punished by the opposite party No. 2 in which regard the Petitioner filed an application on 5.7.94 before the Respondent No. 1 on which an enquiry was set up, which is pending; that in regard to the impugned order, the Respondent No. 2 has held that he has no jurisdiction and now the cases of two of its members to

the court of S.D.M. (South), Varanasi vide his order dated 4th July, 1994; that being aggrieved with the representation of the Petitioner the Respondent No. 3 impressed upon the Respondent No. 1 to transfer the jurisdiction to Respondent No. 2 and that cases were again transferred by Respondent No. 1 to the court of Respondent No. 2 from Court of S.D.M. (South), Varanasi and hence this writ petition.

3. In the counter affidavit, filed on behalf of the Respondents, which has been sworn by Respondent No. 3, it has been stated, inter alia, that the Petitioner is not registered under the Registration Act; that it has been incorrectly stated that the Petitioner is an association of singing and dancing girls, who in fact carry on the business of prostitution and who have been convicted many times under various sections of the Indian Penal Code as well as this Act appending a chart as Annexure C.A. 1; that the District Magistrate, Sub-Divisional Magistrate and the Executive Magistrate all are competent to exercise powers under the various sections of the Act as given in the schedule at the end of the Act; that the allegations made are false and baseless; that the deponent had never threatened any of the members of the alleged society; that there was a complaint from the public that girls from different parts of the country are being brought for purposes of prostitution; that two girls, namely Kalpana and Sonam, who are being prosecuted u/s 16 of the Act, were summoned and warrants were issued by the competent Magistrate; that the City Magistrate has ample powers, jurisdiction and competence to decide the cases under the Act; and that the deponent is duty bound to take action against any person acting against the provisions of the law.

4. To this counter, a rejoinder has been filed by the Petitioner stating inter alia, that the members of the Petitioner are singers and dancers and not prostitutes; that Annexure 1 does not disclose conviction of the members of the Petitioner; that it is denied that the Executive Magistrate has powers to exercise jurisdiction under various sections of the Act rather it is only the District Magistrate, S.D.M. and the Metropolitan Magistrate etc. have the jurisdiction; that the Respondent No. 3 had failed to prove that a complaint was made by the public; and that the Respondent No. 2 has no jurisdiction to issue search warrant, which was issued out of enmity due to not paying illegal money to him.

5. The Petitioner has also filed a petition seeking amendment in the writ petition stating, inter alia, that Respondent No. 2 has no jurisdiction to issue notice u/s 20 of the Act and that the notices as contained in Annexures 9 to 14 issued against six members of the Petitioner namely (i) Smt. Bano wife of Nandoo, (ii) Smt. Savitri daughter of Ram Singh, (iii) Anjoo daughter of Baboo Lal, (iv) Smt. Afzal wife of Rahmat, (v) Smt. Sarswati and (vi) Smt. Chhaggan are wholly illegal, arbitrary and without jurisdiction and they be quashed.

6. Mr. Kailash Nath Tripathi, learned Counsel appearing on behalf of the Petitioner made only this contention; In the schedule attached with the Act, only the District Magistrate, Sub-Divisional Magistrate; or any Executive Magistrate

pecially empowered by the State Government are competent to exercise powers under Sections 16 and 20 of the Act and in view of the fact that the City Magistrate, Varanasi does not figure, in the aforementioned category, the order of transfer made by the District Magistrate is wholly void and thus liable to be quashed.

7. Mr. Jagdish Tewari, the learned A.G.A. appearing on behalf of the Respondents, on the other hand, contended as follows: u/s 22 of the Code of Criminal Procedure, the District Magistrate may, from time to time, define the local limits of the area within which an Executive Magistrate may exercise all or any of the powers with which they may be invested subject to the control of the State Government and that the District Magistrate, Varanasi in view of the exigency conferred such Jurisdiction in Respondent No. 2, who is higher in rank than that of the S.D.M. Section 23 of the Code confers Jurisdiction upon the District Magistrate to make rules or give special orders as to the distribution of business amongst the executive Magistrates subordinate to him consistent with the Code of Criminal Procedure and accordingly, no wrong was committed by the District Magistrate while passing the impugned order.

8. Mr. Tripathi, in reply, contended that under Clause (4) of Section 20 of the Code, it is the State Government who may place an Executive Magistrate in charge of a Sub-Division and may relieve him of the charge as the occasion requires.

9. In our view the submissions made by the learned Counsel for the Petitioner lack substance.

Section 20(4) of the Code reads thus:

20 (4). The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

Its bare perusal shows that it confers jurisdiction in the State Government to place an Executive Magistrate in charge of a Sub-division. Section 22 of the Code reads thus:

22. Local Jurisdiction of Executive Magistrates.--(1) Subject to the control of the State Government, the District Magistrate, may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend through-out the district.

Section 23 of the Code reads thus:

23. Subordination of Executive Magistrates.--(1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District

Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

A reading of the aforesaid Sections shows that the District Magistrate, subject to the control of the State Government, is vested with the powers not only for distribution of the business amongst the Executive Magistrates subordinate to him but also to define the local limits of the area within which they may exercise all or any of the powers with which they may be invested under the law.

It is not in dispute before us that the City Magistrate, Varanasi is not an Executive Magistrate and that he was vested with the jurisdiction to decide the entire cases under the Act. No decision to the contrary of the State Government has been brought on the record by the Petitioner. Accordingly, we hold that the City Magistrate has jurisdiction to decide cases under the Act.

10. The solitary submission of Sri Tripathi having failed, we dismiss this writ petition.

11. In the peculiar facts and circumstances, however, we make no order as to cost.