

(1991) 02 DEL CK 0059

In the Delhi High Court

Case No : Criminal Revision Appeal No. 37 of 1990

Meena and Others

APPELLANT

Vs

State (Delhi Administration)

RESPONDENT

Date of Decision : 04-02-1991

Acts Referred:

Citation : (1991) 43 DLT 527 : (1991) 1 DMC 435

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : K.K. Sud, K.P. Subrabha and B.D. Batra, for the Appellant;

Judgement

V.B. Bansal, J.

(1) By way of this petition the petitioners have challenged the framing of the charge u/s 366-A of the Indian Penal Code against them by Additional Sessions Judge, Delhi vide order dated 17th October 1989.

(2) The matter relates to an incident dated 6th June 1987 regarding which Fir No. 371 was recorded at Police Station Rajouri Garden, New Delhi on the basis of the rukka sent by Assistant Commissioner of Police, Moti Nagar.

(3) Briefly stated the prosecution story has been that there was a secret information with Acp Moti Nagar that premises No. El 45, 185 and 186, Raghbir Nagar, New Delhi were being used as brothel by one Lajjo, her daughter, Smt. Meena and another person named, Rajiv. This information was verified by Acp to be correct and so after calling officials of the special staff, he organized a raiding party in which besides the police officials one person from the public named, Prem Prakash, was joined. He was briefed and three currency notes of Rs. 100.00 each were given to him with a direction to go to premises No. 185, Raghbir Nagar to have a talk with Smt. Lajjo and Smt. Meena and Rajiv for getting girl for prostitution and settle the matter after satisfying himself that the said girl was ready of her own free will to indulge in sexual inter course with him. The prosecution story further goes to show that Si Joginder Pal was sent as a

shadow witness and Prem Prakash after entering the said house met Smt. Meena and came to know from her that 5-6 girls of different ages were available and he could have a choice of his own. He was also informed by Smt. Lajjo that she would provide a furnished bed room and would charge Rs. 100.00 . At the instance of Smt. Meena, Rajiv brought different girls who gave their charges for being available to the complainant for prostitution. One girl, named, Asha made a demand of Rs. 400.00 but ultimately agreed to be available to Prem Prakash for Rs. 300.00 . The government currency notes of Rs. 300.00 made available to Prem Prakash were delivered by him to Rajiv who handed them over to Meena. She gave one government currency note to Asha, another to Smt. Lajjo while the third one was kept with her for herself. It was also found that these girls offered themselves for prostitution on their own free will. The case was registered and after investigation the petitioner were challenged (challaned). Learned trial court after hearing arguments found a prima facie case under sections 3, 4, 5, 6, and 7 of the Immoral Traffic (Prevention) Act, 1956 and u/s 366-A of the Indian Penal Code vide impugned order dated 17th October 1989.

(4) I have hearted learned counsel for the petitioners and learned standing counsel for the respondent. I have also perused the relevant statement. The only grievance of learned counsel for the petitioner has been qua the order for framing of the charge against the petitioners u/s 366-A of the Indian Penal Code. It would, in my view, be appropriate to quote this section, which reads as under:

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"366-A.Procuration of minor girl-Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be liable to fine."

A bare reading of the aforesaid provision makes it abundantly clear that there has to be inducement to a girl below 18 years of age so that she may go from one place to another or do some other acts with intent that she was likely to be forced or seduced to intercourse with another person. The basic ingredient for this offence has to be the giving of inducement. There can possibly be not dispute with regard to the legal proposition that if the Judge is of opinion that there is ground for presuming that an accused has committed an offence charge has to be framed for the said offence by a Sessions Court. While, on the other hand, if the Court finds that there is no sufficient ground for proceeding against the accused he has to be discharged for reasons to be recorded. Reference in this regard can be made to Sections 227 and 228 of the Code of Criminal Procedure.

(5) In the instant case the main reliance of the prosecution is upon the Fir recorded on the statement of Acp Moti Nagar and also the statement of Prem Prakash, the decoy witness. As already referred to, it has clearly been mentioned in the nikka by Acp and also by Prem Prakash in his statement u/s 161 of the Criminal Procedure Code that the girls made available to Prem Prakash in house No. 185, Raghbir Nagar, offered themselves of their own free will. There is

nothing in the statement of the witness to show that there was any inducement by the petitioners to them or that they were forced or seduced to illicit intercourse by the petitioners. In these circumstances I have no hesitation in coming to the conclusion that there was no sufficient material before the learned trial court for holding that a prima facie case u/s 366-A of the Indian Penal Code was made out against the petitioners. I find support for this view from the case Ramesh appellant, v. State of Maharashtra, 1963 (1) CrL.J. 16. It has been observed in the said judgment that seduction to intercourse contemplated by Section 366-A does not mean merely straying from the path of virtue by a female for the first time. It is further observed that the word "seduce" is used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time and also in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion. A person who merely accompanies a woman going out to ply her profession of a prostitute, even if she has not attained the age of eighteen years, does not thereby commit an offence u/s 366-A of the Indian Penal Code. Similarly persons giving encouragement or rendering assistance to a woman/prostitute offering herself promiscuously for money to customers cannot be said to have committed an offence u/s 366, IPC. I am clearly of the view that the impugned order cannot be sustained qua the direction for framing of the charge u/s 366A of the Indian Penal Code against the petitioners. 6. In view of my aforesaid discussion, the Revision Petition is allowed. The impugned order dated 17th October 1989 of Additional Sessions Judge, 530 Delhi directing the framing of the charge is modified to the extent that there will be no charge against the petitioners u/s 366-A of the Indian Penal Code. The trial court would now proceed further in accordance with law. The petitioners are directed to appear before the trial court on 18th February 1991. Petition allowed.