
(2011) 02 GUJ CK 0159

In the Gujarat High Court

Case No : Criminal Misc.Application No. 10798 of 2010

Mintu Sinh @ Rana and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 9

Citation : (2011) 02 GUJ CK 0159

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : Chetan B. Raval, s 1-3, for the Appellant; J.K. Shah, APP for Respondent 1, for the Respondent

Judgement

Akil Kureshi, J.—Petitioners are original accused in FIR bearing C.R. No. II-3052 of 2009 registered at D.C.B. Police Station, Ahmedabad City on 23.8.2009. Pursuant to said complaint, investigation was carried out and charge-sheet was already filed. Petitioners seek that reference to Section 9 of the Immoral Traffic (Prevention) Act, 1956 be deleted since even as per the allegation of the complaint, ingredients of the said offence are not disclosed.

2. Counsel for the Petitioners drew my attention to order passed on 30th June, 2010 passed in Criminal Revision Application No. 270 of 2010; wherein, under identical circumstances, Section 9 came to be deleted qua other accused making following observations:

6. One Pooja @ Rekha, daughter of Narendra Prakash in her statement dated 23.8.2009 had narrated the background under which she was drawn into the prostitution stating inter-alia that her husband was not earning income and had driven her out from her home with her children. She was struggling to make living in Delhi and that is how she was forced to take up the profession. She thereafter, came to Ahmedabad about 15 days before the date of incident since she needed money. She had contacted her friend in Ahmedabad. She thereafter, used to entertain customers brought by the accused and others for which they

used to charge commission. This in the nutshell is the story. Similar statements have been given by other ladies who were found involved in the said incident.

7. Question is whether ingredients of Section 9 of the Act could be stated to have been disclosed. Section 9 reads as follows:

9. Seduction of a person in custody.- Any person who having the custody, charge or care of, or a position of authority over, any person causes or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

8. From the perusal of Section 9 of the Act, it is clear that it applies in a case where the accused who having the custody, charge or care of, or position of authority over any person, causes or aids or abets the seduction for prostitution of that person. In the present case, upon perusal of the evidence collected by the prosecution, I do not find that there is any element of the Petitioners being in custody or charge or care of any person or in a position of authority over such person who is drawn into prostitution. To this limited extent, the Petitioners are legally correct in contending that whatever be the outcome of the trial, Section 9 of the Act cannot be stated to have been involved. Learned Single Judge of this Court in case of Sureshbhai Prahladbhai Patel v. State of Gujarat(supra) made following observations:

9. It is evident from the above statements that the girls allegedly involved in prostitution did not stay in hotel Hidway owned by the revisioner. It is clear that they were taken to the hotel by the person through whom they were engaged, and therefore, it cannot be said that they were either under custody or charge or care of the revisioner who happens to be owner of the hotel. No other factors are indicated except that revisioner is the owner of the hotel and allegedly he used to charge more money from the customers and pay less to the girls, and therefore, there is nothing to indicate that he was enjoying a position of authority over the girls. Therefore, the aforesaid ingredients of Section 9 are not made out ,at this stage, even accepting the prosecution case at its face value.

9.1 Section 9 also provides that person who aids or abets seduction for prostitution of that person shall also be punishable. Term "seduction" has been dealt with by the Apex Court in Ramesh Vs. The State of Maharashtra, wherein it was observed thus:

Seduction implies surrender of her body by a woman who is otherwise reluctant or unwilling to submit herself to illicit intercourse in consequence of persuasion, flattery, blandishment or importunity, whether such surrender is for the first time

or is preceded by similar surrender on earlier occasions. But where a woman offers herself for intercourse for money not casually but in the course of her profession as a prostitute - there are no scruples nor reluctance to be overcome, and surrender by her is not seduction within the Code. It would then be impossible to hold that a person who instigates another to assist a woman following the profession of a prostitute abets him to do an act with intent that she may or with knowledge that she will be seduced to illicit intercourse.

9.2 In the light of these observations, the contents of the statements of the girls, as discussed above, do not make out a case of seduction either against the revisioner.

9.3 In the opinion of this Court, therefore, the requirements of Section 9 of the Act are not fulfilled even after taking the prosecution case, as it is, against the revisioner. The revisioner, therefore, cannot be made to face a charge and trial for offence punishable u/s 9 of the Act.

9. In the result, petition succeeds to the limited extent of ordering deletion of charge of Section 9 of the Act against the present Petitioners from the pending complaint against them.

3. Since situations in the present case are identical, Section 9 of the Immoral Traffic (Prevention) Act, 1956 is also ordered to be deleted.

4. Rule made absolute to the aforesaid extent. Direct service.