

(2008) 07 BOM CK 0111

In the Bombay High Court

Case No : Criminal W.P. No. 337 of 2008

Naveen Rego

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Immoral Traffic (Prevention) Act, 1956 — Section 18, 2, 3, 4, 5

Citation : (2008) CriLJ 4733

Hon'ble Judges : Ranjana Desai, J; R.P. Sondur Baldota, J

Bench : Division Bench

Advocate : Michelle Mendonca, for the Appellant; S.R. Borulkar, Ld. Public Prosecutor, for the Respondent

Judgement

Ranjana Desai, J.—Rule. Respondents waive service. By consent of the parties taken up for hearing forthwith.

This petition is filed under Article 226 of the Constitution of India, by one Mr. Navin Rego who is the representative of International Justice Mission, a human rights organization which makes efforts to rescue minor girls who are commercially exploited or trafficked for the purposes of sex.

2. It appears that on 8th February, 2008 a raid was conducted at Dhoom Bar and Restaurant at Bhiwandi under the provisions of the Immoral Traffic Prevention Act, 1956 (P.I.T.A. for short) by Bhiwandi Town Police and Shantinagar Police Station. According to the petitioner, the evidence includes illegal prostitution activities documents on Video CD, statements of the complainant, bogus customer, respectable and independent panchas and victims. On the same day Bhiwandi Town police prepared a panchanama and handed it over to Shantinagar Police Station. The grievance of the petitioner appears to be that on 9th February, 2008, Shantinagar police station released victims into the hands of the traffickers and refused to lodge complaint on the ground that there was lack of evidence. According to the petitioner on 11th February, 2008 the petitioner gave

written complaint to the Joint Commissioner of Police, Mr. Madhu Shinde. According to the petitioner, Mr. Madhu Shinde was ineffective and therefore he forwarded the complaint to D.C.P. Ankush Shinde who also did not respond to the complaint. Aggrieved by this, attitude of the police, the petitioner has filed this petition.

3. The petitioner has made the following 1 prayers:

(1) That this Hon''ble Court be pleased to issue appropriate writs, directions and orders to the Shantinagar Police Station to register offences u/s 3, 4, 5 and 6 of the Immoral Traffic Prevention Act, 1956 against the owner, manager, cashier, waiter -pimps for the Dhoom Bar and Restaurant situated at Thane-Nashik Highway, Kalyan Phata, Bhiwandi on the basis of the video recording and affidavits of witnesses of the illegal activities being conducted at the bar.

(2) That this Hon''ble Court be pleased to issue appropriate writs, directions and orders directing a suitable independent agency to conduct an investigation into the P.I.T.A. offences which were committed by the bar owner, managers, waiters and customers of Dhoom Bar and Restaurant.

(3) That this Hon''ble Court be pleased to issue appropriate writs, directions and orders directing the prosecution of police officers, namely Senior Police Inspector J.J. Jadhav and his subordinates for abetting the offences committed by the bar owner, managers, waiters and customers of Dhoom Bar.

(4) That this Hon''ble High Court be pleased to issue appropriate writs, directions and orders directing the Director General of Police for Maharashtra to immediately commence departmental proceedings against the police officers Respondent No. 2, Senior Police Inspector J.J. Jadhav for gross misconduct in refusing to register offences punishable by law.

(5) That this Hon''ble Court be pleased to lay down guidelines for the police to conduct P.I.T.A. traps with due regard to the direction of the Supreme Court, dignity of the victim and probity of all concerned.

(6) That this Hon''ble Court be pleased to direct the independent investigation agency to investigate the role of Mr. Shankar Shetty.

(7) Pending final hearing and disposal of this case, that this Hon''ble Court be pleased to direct either the Commissioner of Police, Thane or the independent investigation agency to take all lawful measures to rescue these minor girls, illegally released by respondent No. 2 Senior Police Inspector J.J. Jadhav, and produce them before a Magistrate or the appropriate Child Welfare Committee for care and protection.

4. We have heard at some length learned Counsel appearing for the petitioner and learned Public Prosecutor Shri. Borulkar. Learned Counsel for the petitioner made a serious grievance that in this case the police have shown extreme inertia and inaction. She submitted that insensitivity of the police to the grave offence of

this nature needs to be commented upon. She submitted that at every stage this respondents have taken time to implement the orders passed by this Court. Learned Counsel pointed out that though this Court directed the Central Bureau of Investigation (C.B.I. for short) to take over the investigation, a notification u/s 6 of the Delhi Police Establishment Act came to be issued only on 3rd May, 2008. She submitted that seven victim girls are yet to be traced. Their age verification is yet to be done. One minor girl is missing. Learned Counsel submitted that the police must be directed to take immediate steps to trace these girls. She also submitted that two officers who have been indicted and against whom a departmental inquiry is proposed, ought to have been suspended. However, the police for reasons best known to them have not suspended them. She submitted that some orders need to be passed in this behalf also. She also submitted that one Shankar Shetty has played a major role in this case, however his involvement has not been investigated. Learned Counsel further submitted that the investigating officers have outdated notions as regards investigation of offences under the P.I.T.A. Their attention needs to be drawn to the relevant judgments of the Supreme Court. She submitted that therefore this Court should pass appropriate orders.

5. On the last occasion, we had directed Shri. Borulkar, learned Public Prosecutor to let us know today as to whether considering the seriousness of the allegations, the State desires to take decision of suspending the concerned officers pending the departmental enquiry. Pursuant to our order the Commissioner of Police, Thane has submitted his report dated 12th July, 2008 to this Court. The said report is taken on record and marked "X". After referring to the relevant Rule No. 442 contained in Manual Part-1 which deals with the suspension and allowance during suspension of any police officer, the Commissioner of Police, Thane has stated that, in his opinion in this case transfer orders of the defaulting officers should be issued within a week and within the same period, departmental inquiry will also have to be ordered. We trust the discretion of the Commissioner of Police, Thane. We deem it appropriate to rely on the, opinion expressed by him. We hope and trust that he will do the needful and ensure that the departmental inquiry is "conducted" in a fair and impartial manner. As stated by the Commissioner of Police, therefore let the transfer orders of the erring officers be issued within a week from today. Ideally the departmental enquiry should have been initiated earlier. In any case, since the Commissioner of Police has now stated that it will be initiated within a week, we do not want to say anything more on this aspect. Let the departmental enquiry be initiated within a week from today. In the circumstances of the case and considering the serious nature of allegations made against the concerned officers, we direct that the departmental enquiry be concluded within a period of four months from the date of receipt of this order by the Commissioner of Police, Thane.

6. Prayer (1) of the petition pertains to registration of offences under Sections 3, 4, 5 and 6 of the P.I.T.A. Since admittedly the offences have been registered, this prayer does not survive.

7. So far as prayer (2) is concerned, it pertains to directing a suitable independent agency to conduct investigation into the offences. Admittedly, pursuant to the order dated 19th March, 2008 C.B.I. has been directed to take over the investigation of this case. We have already noted that notification u/s 6 of the Delhi Police Establishment Act, has been issued on 3rd May, 2008. We hope and trust that the C.B.I. takes expeditious steps to investigate this case. Prayer (2) of the petition therefore does not survive.

8. Prayers (3) and (4) of the petition pertain to initiation of prosecution and departmental enquiry against the erring officers. We have already referred to the report submitted to us by the Commissioner of Police, Thane. We have also directed him to ensure that the departmental enquiry is concluded within a period of four months from the date of receipt of this order by him. We have recorded the decision of the Commissioner of Police, Thane to transfer the erring officers within a period of one week from today. In our opinion, therefore prayers (3) and (4) are substantially complied with. Needless to say that the prayer regarding the prosecution of the erring officers cannot be dealt with at this stage. It will depend upon the result of the departmental enquiry. We keep that issue open.

9. Prayer (5) pertains to petitioners' request for issuance of guidelines to the police which can help the police while conducting P.I.T.A. Traps. The Supreme Court has in a series of judgment given necessary guidelines to the police. Even this Court has time and again issued necessary guidelines. The guidelines are there only to be followed by the police officers. We feel that unfortunately these guidelines are not brought to the notice of the police officers who investigate P.I.T.A offences. It is the case of the petitioner, that despite overwhelming information, the Senior Inspector of Police Mr. Jadhav refused to register the case saying that he needs to conduct a further enquiry. Mr. Jadhav stated that no offence was made out because the girl had not been sexually abused or undressed by the bogus customer. According to the petitioner the direction issued by the Supreme Court that bogus customers should not behave like real customers was pointed out to Mr. Jadhav, but he brushed it aside.

10. We do not want at this stage to go into the question whether what the petitioner is alleging is factually correct or not. But we feel that in all such cases, attention of the investigating officers must be drawn to the relevant judgments of the Supreme Court, particularly the judgment of the Supreme Court in Gaurav Jain Vs. Union of India and others, . The Supreme Court has in paragraph 16 thereof stated as under:

Section 2(a) of the Immoral Traffic (Prevention) Act, 1956 (for short TTP Act) defines "brothel" to mean any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purpose of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes. The essential ingredient therefore, is a place being used for the purpose of sexual exploitation or abuse. The phrase for the purpose of

indicates that the place being used for the purpose of the prostitution may be a brothel provided a person uses the place and ask for girls, where the person is shown girls to select from and where one does engage or offer her body for promiscuous sexual intercourse for hire. In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove is that a girl/lady should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of prostitution would be drawn from diverse circumstances established in a case. Sexuality has got to be established but that does not require the evidence-of more than one customer and no evidence of actual intercourse should be adduced or proved. It is not necessary that there should be repeated visits by person to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it. The prosecution has to prove only that in a premises a female indulges in the act of offering her body for promiscuous sexual intercourse for hire. On proof thereof, it becomes a brothel.

11. We therefore direct Director General of Police, State of Maharashtra to bring to the notice of the Officers who investigate cases under the P.I.T.A. the relevant judgments of the Supreme Court. The gist of these judgments may be prepared and circulated to the police officers and workshops may be conducted by senior police officers to train the investigating officers. Prayer (5) of the petition is therefore substantially granted.

12. Prayer (6) refers to investigation into the role of Shankar Shetty. Mr. Borulkar learned Public Prosecutor makes a statement that the police will investigate whether Shankar Shetty has played any role in this case and if it is found that he has indeed played a role, necessary steps will be taken. We accept this statement. In view of this statement, prayer (6) does not survive.

13. We direct the police to continue with their efforts to trace the missing girls. We further direct that if they are traced, necessary steps as laid down in P.I.T.A. may be taken. Mr. Borulkar, learned Public Prosecutor submitted that as required by Section 18 of the P.I.T.A. the police have forwarded the information to the District Magistrate on 9th April, 2008. We direct the District Magistrate to take necessary steps as per Section 18 of the P.I.T.A. as expeditiously as possible and in any event within a period of two months from the date of receipt of this order by him.

14. With the above observations and directions, the petition is disposed off.