
(2002) 11 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 49583 of 2002

Radha and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-11-2002

Acts Referred:

Constitution of India, 1950 — Article 21
Immoral Traffic (Prevention) Act, 1956 — Section 7, 8

Citation : (2003) 1 AWC 455

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Anil Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a mandamus directing the respondents and their subordinates and other officers not to evict the petitioners from their residences and not to harass them.

2. Heard learned counsel for the parties.

3. In this case on 19.11.2002, learned standing counsel prayed for time to seek instructions. Today learned standing counsel has submitted written instructions before us which shall be placed on record and shall be treated as the counter-affidavit in this case.

4. It is alleged in paragraph 8 of the writ petition that the petitioners have been doing the profession of singing and dancing for the last several years and have nothing to do with prostitution nor have they violated the Immoral Traffic (Prevention) Act, 1956. They are living in their respective residences coming within the area of police station Brahmapuri, district Meerut. It is alleged in paragraph 6 of the writ petition that after coming into force of the amending Act No. 44 of 1984, the police authorities and so-called social workers started harassing everybody in the red-light area on the basis of the allegations that

they were indulging in the vice of prostitution. In the year 1985, an attempt was made by the Circle Officer (City) and others to evict the petitioners and other ladies from their respective residences and also to create conditions under which it may become impossible for them to peacefully and wilfully carry on their profession with the result that the petitioners were constrained to file Writ Petition No. 8353 of 1985, Sunahari Devi v. State of U. P. and others. Learned standing counsel gave an undertaking in that case that the petitioners shall not be dispossessed from their respective residences nor shall there be any interference with their right to carry on their profession. Accordingly, the writ petition was disposed of with the direction that the respondents shall not dispossess the petitioners from their respective residences nor shall they interfere with their right of singing and dancing except in accordance with law. True copy of the judgment dated 14.5.1985 is Annexure-1 to the writ petition. Thereafter things remained quiet for some time and the petitioners could perform their profession of singing and dancing without any hindrance and live in their residences.

5. It has been alleged in paragraph 13 of the writ petition that like the other places in the country, in Meerut also prostitutes, singers and dancers and other women were being harassed by the police in all possible ways and numerous writ petitions had to be filed in this connection. In paragraph 14 of the writ petition it is alleged that the petitioners have never been convicted for any offence under the Immoral Traffic (Prevention) Act and the respondents have no right to interfere with their right of living in their respective houses. A similar writ petition being Writ Petition No. 4332 of 1976, Smt. Laung Shree and Ors. v. State of U. P., was filed which was heard and allowed by a Division Bench of this Court on 7.9.1977. True copy of the judgment in that case is Annexure-2 to the writ petition. The petition was allowed and the respondents were directed not to interfere with the right of the petitioners to carry on their profession of singing and dancing. Another writ petition being Writ Petition No. 27141 of 1997, Swarn Lata and Ors. v. Superintendent of Police (City), Allahabad and Ors., was also decided by this Court on 19.8.1997, with the direction that the respondents shall not dispossess the petitioners from their respective residences except in accordance with law. True copy of the judgment dated 19.8.1997 in that petition is Annexure-3 to the writ petition. Interim orders in other writ petitions are Annexures-4 and 6 to those writ petitions. The scope of the provisions of the Immoral Traffic (Prevention) Act has been considered by the Supreme Court in Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc.,

6. It is alleged in paragraph 22 of the writ petition that although the petitioners are not prostitutes even then the respondent No. 4, the Station Officer, police station Brahmapuri, district Meerut and police constables have come to the residences of the petitioners and asked them to vacate their residences as early as possible failing which they shall be evicted with the use of police force and they have started stopping ingress and egress of the petitioners and their

children and other relations and servants from their houses so as to create such a situation that the petitioners are compelled to leave their residences on their own. The petitioners have prayed that the respondents be restrained from evicting the petitioners from their respective houses and from harassing the petitioners.

7. In the written instructions filed by the learned standing counsel it has been stated in paragraph 2 that there is no intention to evict the petitioners. However, it is alleged in paragraph 3 that the petitioners are indulging in prostitution on the pretext that they are only doing the act of singing and dancing.

8. We are assuming that the petitioners are doing the work of prostitution and not merely singing and dancing. However, the question arises whether they can be evicted from their residences and can be harassed merely because they are prostitutes.

9. It may be mentioned that prostitution itself is no offence except in the manner mentioned in Sections 7 and 8 of the Immoral Traffic (Prevention) Act, 1956, vide *T. Jacob v. State of Kerala*, AIR 1971 Ker 166. Women become prostitutes not because they enjoy prostitution but due to poverty. The level of poverty in this country is appalling. Almost 50% of our people are living below the poverty line in horrible conditions, e.g., without employment, proper food, housing, medical care, education, etc. We have noted from the media that in Rajasthan, people were eating Rotts made of grass. In Orissa people were eating mango kernels, and in Tamil Nadu women are selling one of their kidneys to feed their families. Starvation deaths have been reported in Rajasthan, Orissa, M. P., etc. and it is no wonder that to escape from this abject poverty, a large number of women are compelled to sell their bodies to earn some money to fill their stomachs. Ordinarily, no woman will surrender her body to a man voluntarily unless she respects and loves him. Prostitutes are normally not bad women and they are wrongly regarded as women of vice by society. In fact, in the novels and stories of the great Bengali writer Sharad Chandra Chattopadhyaya many prostitutes are shown to be women of high character, e.g., Rajya Laxmi in Sharad Chandra's famous novel "Shri Kant," and Chandramukhi in "Devdas". Similarly in the great novel "Crime and Punishment" by the famous Russian writer Dostoyevsky, we come across the character of Sofia Marmaledov who is compelled to become a prostitute due to poverty, although she is depicted as a young woman of high character who earns for her family members who would otherwise starve. In the famous poem "Chakle" by the great Urdu writer Sahir Ludhyanvi, the plight of prostitutes in India has been vividly depicted, and this poem has been sung (with some modifications) in the Hindi Film "Pyasa". Hence, the approach of society towards the prostitutes must change, and sympathy must be shown towards them as it must be realized that they are not necessarily women of bad character but have been driven to the profession due to acute poverty in their family. It was reported in the press that 1,200 Nepali girls are sold every year by their parents and brought to brothels in Calcutta and

elsewhere because the parents cannot feed those girls. Similar is the plight in various parts of our country also.

10. In our opinion, prostitutes are also entitled to live a life of dignity which is part of Article 21 of the Constitution as interpreted by the Supreme Court. People including the police must have a sympathetic approach towards them and should not harass them, rather they should have sympathy towards them, and attempt should be made to rehabilitate them in society.

11. In our opinion, the State Government must formulate a scheme for rehabilitation of prostitutes in society and this is only possible if these women are given technical skills so that they can earn their bread by these skills instead of doing so by selling their bodies for filling their stomachs.

12. In 1982 Cr App R 264 Chinnamma Sivadas v. State (Delhi Administration), the Supreme Court held that the State Government should evolve a scheme in which women rescued from brothels and deserted women lodged in protective homes must be able to live with human dignity and find gainful employment after discharge. In view of the aforesaid decision of the Supreme Court and in view of the fact that the prostitutes are also entitled to live a life of dignity, we direct the State Government that a scheme should be framed whereby in every city in the State of U. P., the prostitutes are given some technical training so that they can earn their bread through such technical skills.

13. The writ petition is therefore allowed and the respondents are directed not to evict the petitioners from their residences and not to harass them except in accordance with law.

14. Although this writ petition is allowed, we direct that in order to monitor the aforesaid scheme as suggested by us, this petition should be again listed before us after two months on 7.2.2003, and by that date the State Government should prepare a scheme after consulting experts and submit the same before us so that we can examine the same and give appropriate directions to enforce the scheme. Let a copy of this judgment be sent by the Registrar General of this Court to the Chief Secretary, U. P., and also to the Secretaries of the Departments of Technical Education, Law, Women's Welfare and Finance, U. P.