
(1981) 11 DEL CK 0001

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 328 of 1980

Sadhna

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-11-1981

Acts Referred:

Citation : (1981) 19 DLT 210 : (1982) ILR Delhi 339

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : R.K. Naseem and D.R. Sethi, for the Appellant;

Judgement

M.L. Jain, J.

(1) The petitioner is being prosecuted under S. 294 I. P. C. upon the allegation that on September 20, 1979, at about 6.40 P.M., the petitioner along with three other women was performing cabaret dances in Uma Restaurant in .the colony of Naraina. They were wearing nothing except under wears and brassieres and were vibrating the various parts of their body. This" was considered obscene because such type of dances injuriously affect the character of the people. The proprietor of the Restaurant and all the four women dancers have been summoned by the learned Metropolitan Magistrate by his order of April 28, 1980, which the petitioner is challenging in this petition.

(2) The short question is whether such types of semi-nude dances are covered by S. 294 I. P. C. According to that section, "Whoever to the annoyance of others (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term A which may extend to three months, or with fine, or with both." According to Ranjit D.. Udeshi v. The State of Maharashtra, 1965 (2) Cri.L. J. 8, the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to immoral influences, but the test of obscenity must agree with the

freedom of speech and expression guaranteed under our Constitution. Therefore, sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. In *Shri Chandrakant Kalyandas Kakodkar Vs. The State of Maharashtra and Others*, , it was observed that it is a duty of the court to consider the obscene matter by taking an overall view. The concept of obscenity would differ from country to country depending on the standards of morals of contemporary society. What is considered as a piece of literature in, France may be obscene in England and what is considered in both countries as not harmful to public order and morals, may be obscene in our country. Mr. Sethi, Therefore, argued that cabaret dances are harmful to public order and morals and are likely to deprave and corrupt the minds of the viewers, specially those whom are young, and besides being obscene, cause annoyance to the other customers of the restaurant. The prosecution of the accused is, Therefore, justified. I am afraid, I find it hard to uphold the contention of Mr. Sethi. In *Chandrakant (supra)*, the Supreme Court observed that the standards of contemporary society in India are also fast changing. The adults and adolescents have available to them a large number of classics, novels, stories and pieces of literature which have a content of sex, love and romance. In the field of art and cinema also the adolescent is shown situations which even a quarter of century ago would be considered derogatory to public morality, but having regard to changed conditions, are more taken for granted without in any way tending to debase or debauch the mind. I am fortified in the view I am taking by a ruling of the Bombay High Court in the *State of Maharashtra v. Joyce Zee alias Temiko*, (1975) 77 B. R. L. J. 218, wherein it was observed that S. 294 of the Indian Penal Code 1860, must be read subject to the general exceptions mentioned in Ss. 87 and 88 of that Code. A .customer, above the age of eighteen, who goes to a hotel, where a cabaret show is run, looks forward to be entertained by obscenity and cannot complain of annoyance to which, if any, he shall be deemed to have given his consent. Even assuming that such a hotel where any person can buy tickets Of seats is considered to be a public place, it cannot beheld that the obscenity and annoyance which are punishable under S. 1. 294 I. P. C. are caused must be the consent, express or implied, of ;such person. -Moreover, the tests of obscenity laid down in *Udeshi (supra)* and in English cases applicable to books which may fall into anybody's hand, cannot be applied to cabaret shows in costly hotels attended by paying adults. An offence under S. 294, I. P. C., can be said to have been committed to the annoyance of the public, if the public or a section thereof objects. In *Joyce Zee (supra)*, the dancers entered smoking on the heads of the customers, danced for some time and then invited, them to remove their clothes fill they were left in panties, They went round the tables", Swished their backs and breasts against the customers, pushed their nipples in the mouths of some and imitated sexual acts. These acts show that what happened In Bombay was far worse than what took place in Naraina. And yet the High Court of Bombay held that no offence under S. 294 was made out. The learned Judge observed that if the State wants to prohibit such cabaret, shows as wrongful exploitation of sex or as socially harmful orindecent,it may enact some special

legislation. I think, the learned Judge was right. Where cabaret shows are prominently advertised people book their seats often in advance and pay excessively to attend those shows for hours with hundreds like them, it would not be possible to convict a cabaret dancer merely because a section of the people not attending such shows equate them, perhaps rightly, with pornography, and feel annoyed and disturbed at the level of entertainment made accessible so openly. Cabarets are shown all over the world and they have also gyrated to Delhi and unless there is a special legislation to ban them, it will be a misuse of S. 294 I. P. C., to punish the entertainers and organizers of such shows.

(3) I, Therefore, accept this petition, set aside the impugned order of the learned Metropolitan Magistrate and quash the proceedings.