

(1936) 06 CAL CK 0028
In the Calcutta High Court
Case No : Criminal Revision No. 243 of 1936

Sarala Peshakar

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision : 08-06-1936

Acts Referred:

Citation : (1936) 06 CAL CK 0028

Judgement

Henderson, J.—This is a Rule calling upon the District Magistrate of Bogra to show cause why the conviction and sentence passed upon the Petitioner under sec. 372 of the Indian Penal Code should not be set aside. The Petitioner is a prostitute and her daughter, one Kiron, is also a prostitute. The prosecution case is based upon the allegation that the Petitioner used to hire out her daughter for a certain sum of money to various visitors who came to her house for entertainment. The Sub-Divisional Magistrate who tried the case convicted the Petitioner and this conviction was upheld by the Sessions Judge.

2. The Rule was issued mainly on ground No. 5 which is in these terms:

For that in the absence of any evidence that the petitioner let Kiron to hire or otherwise disposed of her within the meaning of sec. 372, I. P. Code, her conviction under the said section is illegal and improper and liable to be set aside.

3. This ground really raises two points.

4. The first and most important point raised was whether sec. 372 and its corresponding sec. 373 would have any application to an arrangement made between a manager of a brothel and individual visitors there with regard to isolated acts of sexual intercourse. We have had a long and interesting argument on that point: but inasmuch as the present conviction cannot be supported on other grounds, it is unnecessary for us to give a considered decision on it now.

5. Supposing the Crown were correct in their interpretation of the section on the first point, obviously there should be proof of an act of hiring between the Petitioner and the various visitors. There is absolutely no evidence that any such

arrangement was made. The only thing proved is that some of the visitors paid over a sum of Rs. 2 to the Petitioner. This would be quite consistent with a case that the daughter herself made the arrangements with the visitors and that they paid her mother at her request. The plain fact of the matter seems to be that the prosecution did not appreciate what it was necessary for them to prove and, as a result failed to produce the evidence which is necessary to support the charge.

6. Apart from this main ground upon Which we issued the Rule, there are other reasons why the conviction could not be supported. The charge was drawn all wrong. It was drawn as though the offence were a general one of living on the immoral earnings of a woman. Of course accepting the prosecution case, three separate charges should have been drawn for three separate offences with regard to each of the three visitors. The learned Judge who heard the appeal saw this defect, but thought that no prejudice was caused to 1 he Petitioner. I am unable to accept that view, because the charge as drawn was totally different from what it ought to have been and I cannot believe that if it had been properly drawn, the cross-examination would have been so scrappy and inept as it was.

7. Finally, both the learned Magistrate and the learned Judge omitted to notice that on the prosecution case, the witnesses on whose evidence they have relied were all accomplices of the Petitioner. Now, in a case like this where it seems doubtful whether the money was handed over to the Petitioner by the girl herself or by the visitors, it was very necessary that the Courts, dealing with the facts, should have appreciated the position of these witnesses and then, after considering all the circumstances, come to a conclusion whether they were prepared to believe them or not. On the other hand, both the Courts have treated them as though they were respectable and independent gentlemen whose evidence could not be seriously questioned. For all these reasons, we must make this Rule absolute and set aside the conviction and sentence passed on the Petitioner. She will be discharged from her bail bond and released forthwith. The fine, if paid will be refunded.

Cunliffe, J.

I agree.