

(2016) 02 KAR CK 0045
In the Karnataka High Court
Case No : Criminal Petition No. 5330 of 2015

Shankare Gowda alias Shankara

APPELLANT

Vs

State by Madanayakanahalli Police Station

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Citation : (2016) 165 AIC 677 : (2016) 4 AICLR 729 : (2016) 3 AirKarR 353 :
(2016) ILRKarnataka 3067 : (2016) 3 KantLJ 513

Hon'ble Judges : Mrs. Rathnakala, J.

Bench : Single Bench

Advocate : Sri S. Chetan Nag, Advocate, for the Appellant; Sri Chetan Desai,
HCGP, Smt. Jwala Poulse, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mrs. Rathnakala, J.—Petitioner, who is arrayed as accused No. 2, is charge sheeted in respect of the offence under Sections 3,4, 5, 6, 7, 8 and 9 of the Immoral Traffic (Prevention) Act, 1956 ("the Act" for brevity) read with Sections 366-A and 372 read with Section 34 of IPC. Now the matter is committed to the Sessions Court.

2. The gist of the prosecution story is, on a credible information about ongoing prostitution, the Circle Inspector with his staff and panchas raided one Arunodaya Residency Lodge on the night of 27.8.2010 and found that the accused No. 1 had procured minor girls CW-2 and 3 and lured CW-4 with money and had sent them for prostitution through accused No. 2 to the Lodge, thus was carrying on prostitution with the aid of accused Nos. 3, 4 and 5.

3. Sri. S. Chetan Nag, learned Counsel appearing for the petitioner submits, CW-1/ C.P.I., Nelamangala, is not a designated Special Police Officer under Section 13 of the Act. On the basis of the Search Order dated 27.8.2010 issued to him by the Deputy Superintendent of Police, Nelamangala, he sent CW-8/ decoy witness, CW-7/public person for investigation. Subsequent thereto, he

conducted raid on the said Lodge and apprehended eight accused persons including the petitioner herein. CW-15/P.S.I. (Law and Order), Madanayakanahalli, though not a designated Special Officer under Section 13 of the Act got registered the case in respect of the alleged offences and arrested all the eight accused persons. He made requisitions to the jurisdictional Court to treat the accused Nos. 1 to 3 as victims of the incident and thereafter filed charge sheet against four accused persons. The first accused is shown as absconding. The learned Magistrate without application of mind about the procedural irregularities has taken cognizance of the matter, thereby the consequential charge sheet is vitiated. Assuming that the Deputy Superintendent of Police, Nelamangala, is the Special Police Officer under Section 13 of the Act, the order dated 27.8.2010 issued by him to C.P.I., Nelamangala though captioned as "search order", virtually is an order to conduct the raid. It was not an order enabling the P.S.I. to arrest the person without warrant. The order passed by the Dy.S.P. is illegal and against the provisions of Section 15(1) of the Act. The search is not conducted in front of two or more respectable inhabitants of the locality. As per the medical certificate, the victims/accused Nos. 1 to 3 are above 18 years. Hence, no case under Sections 366A and 372 of IPC is made out.

4. During the course of argument, learned Counsel for the second respondent has placed on record the notification, notifying Special Officers under the Act in the State, which is as below:

"In exercise of the powers conferred by sub-section (1) of Section 13 of the Immoral Traffic (Prevention) Act, 1956 (Central Act 1 ()4 of 1956) read with Section 21 of the General Clauses Act, 1897 (Central Act X of 1897) and in supersession of all the notifications issued earlier in this behalf the Government of Karnataka here by appoints the officers mentioned in column (2) of the Schedule below as Special Police Officer in respect of the areas specified in the corresponding entries within the jurisdiction mentioned in column (3) for the purpose of the said Act:

SI. No.

Officers

Area

(1)

(2)

(3)

1.

Superintendents of Police In charge of the Districts

Within their respective jurisdiction

2.

Additional Superintendents of Police

Within their respective jurisdiction

3.

Sub-Divisional Police Officers

Within their respective jurisdiction

4.

Inspector of Police In charge of Circles

Within their respective jurisdiction

5.

Deputy Commissioners of Police, law and order East, West and DCP Crime in Bangalore City

Within their respective jurisdiction

6.

Assistant Commissioners of Police of Divisions in Bangalore City

Within their respective jurisdiction

7.

Assistant Commissioners of Police, Special Squad, Bangalore City

Within their respective jurisdiction

8.

Police Inspectors In charge of Sub-Divisions in Bangalore City

Within their respective jurisdiction

9.

Police Inspectors, Special Squad, Bangalore City

Within their respective jurisdiction

10.

The Deputy Superintendents of Police of C.A. Squad, C.O.D.

Within their respective jurisdiction

Assailing the said notification, learned Counsel for the petitioner would submit that there cannot be more than one Special Police Officer to a concerned area. The notification supra overlaps the power since depicts more than one Special Officer to the concerned area, the entire notification is against the mandate of

Section 13 of the Act and it has to be necessarily held that, the case is investigated by an Officer, who is not appointed as a Special Police Officer to investigate the offences under the Act.

5. Learned High Court Government Pleader during his reply submissions produced the statement of PW- 1/victim of the incident, who stated that, as on the date of the incident, she was a minor and rightly, the charges are framed under Sections 366-A and 372 of IPC. If the petitioner were to question the notification, Section 482 of Cr.P.C. is not the proper forum for him. The evidence has already begun. There is no circumstance to exercise jurisdiction of this Court under Section 482 of Cr.P.C.

6. Coming to the legal contentions advanced - investigation is not conducted by a Special Officer appointed under Section 13 of the Act. Relevant portion of the statute is Section 13(1) and (2) of the Act, which reads thus:

"13. Special police officer and advisory body.- (1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A)....."

7. Much reliance is placed on the judgment of *Delhi Administration v. Ram Singh* case reported in AIR 1962 SC 63. It was a case of prosecution under Section 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 and Sub-Inspector who investigated into the matter had presented the charge sheet. The Magistrate quashed the charge sheet on the ground that under the Act, only the Special Police Officer was competent to investigate into the matter. The Apex Court ruled that a Special Police Officer derives power for dealing with such offences under Section 551 of the Code of Criminal Procedure (under Act V of 1898) (in pari materia to Section 36 of the Act 2 of 1974), it was observed thus:

"25. We are therefore of opinion that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognisable offences. The result is that this appeal by the Delhi Administration fails and is hereby dismissed."

Though His Lordship J.R. Mudholkar while recording his discerning opinion did not see any danger in simultaneous exercise of power in the investigation by Special Officer and Police Officer, on majority opinion, the appeal was dismissed.

8. Here is the case where the FIR is registered on the report of Circle Inspector of Police. Search is conducted at the order of Deputy Superintendent of Police by Circle Inspector of Police. The incriminating material seized and incorporated in

property form and submitted to the court is signed by the Police Sub-Inspector. Statement of witnesses is recorded by the Police Sub-Inspector, he only has arrested the accused. Police Sub-Inspector is shown as Investigating Officer in the charge sheet though the Deputy Superintendent of Police and Circle Inspector of Police are cited as witnesses in the charge sheet. Police Sub-Inspector cannot be a Special Officer, as per the mandate of Section 13 of the Act, it can only be the Inspector of Police or any Officer of above the rank of Police Inspector who can be appointed as Special Officer. The charge sheet is presented to the Court by the Inspector of Police. Though it looks like parallel exercise of authority by the Deputy Superintendent of Police and Circle Inspector of Police, fact remains that there cannot be more than one Special Officer in reference to an area. If the Deputy Superintendent of Police is exercising his authority under Section 13 of the Act, there is nothing from the charge sheet materials that after issuing order for search, he has monitored the investigation and after completion of investigation was convinced with sufficiency of material to prosecute the accused persons. If it is to be interpreted that Police Inspector is the Special Officer, there is no material evincing his exercise of jurisdiction under Section 15(1) of the Act, which reads thus:

"15. Search without warrant.- (1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer, as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant".

9. As per the recitals in the report of Police Inspector to the S.H.O. of the Police Station, the Deputy Superintendent of Police received information about ongoing prostitution activity in Arunodaya Residency Lodge. On the orders of the Deputy Superintendent of Police, he proceeded to the spot with his staff and panchas and conducted raid. That suffices to infer that he is not conducting himself as a Special Officer under the Act. That further answers the query, why Police Sub-Inspector is cited as Investigating Officer in the charge-sheet. There is no reference from any of the charge sheet papers about either Deputy Superintendent of Police or Police Inspector investigating/monitoring the investigation as Special Officer under the notification dated 5.6.2008. When a procedure is prescribed under law to do a thing in a particular manner, it should be carried out in that manner only. The Police Sub-Inspector, who arrested the accused, submitted proper form to the Court, recorded the statements of the witnesses is not shown to be qualifying as "subordinate Police Officer" notified by the State Government to assist the Special Officer. Relevant provision sub-section (3)(a) of Section 13 of the Act reads thus:

"13. Special police officer and advisory body. -

(1)....(2).....

(3) For the efficient discharge of his functions in relation to offences under this Act-

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit;

(b)....."

10. In that view of the matter, it is inevitable to hold that the investigation was without jurisdiction, which goes to the root of the matter. On that count itself, the criminal prosecution is liable to be quashed without touching other contention regarding defective investigation.

11. That apart, case is registered after conducting preplanned raid with Police personnel and Panchas by the Police Inspector, which is not permissible in view of the judgment of this Court in the matter of *Girishchandra v. The State* by Lokayuktha Police reported in ILR 2013 Kar 983.

12. This is not a petition challenging the ambiguity in the notification of the Government dated 2.8.2008, but illegality cannot be allowed to perpetuate even after noticing that very investigation is without jurisdiction. The registration and investigation of the offences under the Act without authority under Section 13 of the Act is without jurisdiction and a wasteful exercise and abuse of public time and energy; villainy smiles while law fails. Illiteracy and poverty breeds evils of sexual exploitation of vulnerable sex, their abuse for commercial purpose in an organised manner. If a case instituted under the Act shall fail for ambiguity in the Government Order, it is nothing but mockery of democracy. It is high time that the State wakes up and gives effect to the mandate of Section 13 of the Act by appointing specifically one Special Police Officer for a particular area and sensitise the Special Officers so appointed, so that they strictly abide by the provisions of the Act in their official functioning to effectuate the scheme of the Act.

13. So long this business of prostitution is not addressed by strict and firm laws, the right of life and liberty guaranteed under the Constitution of India is of no relevance to the suffering lot victims of immoral trafficking.

14. The Investigation since not steered by Special Officer appointed by Section 13 of the Act is illegal and vitiated, though the trial has already begun, having noticed the basic infirmity allowing the proceedings to continue any more is abuse of the process of the Court itself. On that count, the petition is liable to be quashed under the jurisdiction of Section 482 of Cr.P.C.

15. The petition is allowed. The criminal proceedings in S.C.No.219/2013 pending on the file of VIII Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru, is hereby quashed.

16. Registry to mark a copy of this order to concerned authorities of the Government of Karnataka.