
(2000) 04 OHC CK 0029

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 3955 of 1997

Sushanta Kumar Patra alias and Hemanta Kumar Das and
Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 21-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Immoral Traffic (Prevention) Act, 1956 — Section 2, 3, 4, 5, 6

Citation : (2000) 18 OCR 655

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Devasis Panda, for the Appellant;

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This application u/s 482 of the Code of Criminal Procedure has been filed challenging the order dated 18.9.1996 passed by the learned Subdivisional Judicial Magistrate, Bhubaneswar, taking cognizance of the offences under Sections 3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act, 1956 (for short, "the Act").

2. On 18.9.95 the Inspector-in-charge of Bhubaneswar P.S. draw up a plain paper FIR stating that on the same day after receiving a reliable information with regard to prostitution at Sangam (Shiva) Lodge at Dhauli Junction, he conducted a raid with the assistance of other police officers and some local persons and during search three women were located in the ground floor concealing themselves under a bed. All the three women were within the age group of 18 to 26. During raid, five customers were apprehended, including all the three Petitioners. It is further stated in the FIR that during raid the Petitioners and the other two accused persons were trying to escape. On the basis of such allegations, investigation was taken up and charge-sheet was submitted for offences committed under Sections 3, 4, 5, 6 and 7 of the Act.

3. The learned Counsel appearing for the Petitioners submits that on the given facts, Sections 3, 4, 5 and 6 of the Act are not at all attracted and therefore, the order taking cognizance under the said provisions is illegal. The learned Counsel further submits that so far as Section 7 is concerned, no offence has also been made out On the admitted facts and therefore, the order, taking cognizance under the said Section is also not justified.

4. Before discussing the materials on record, it is necessary to refer to the relevant provisions of the Act. Section 3 of the Act prescribed that any person who keeps or manages, or acts or assists in the keeping or management of a brothel shall be punishable in the manner indicated in the said Section. Section 4 of the Act prescribes for punishment for living on the earnings of prostitution. Section 5 prescribes that any person who procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution or induces a person to go from any place for the purpose of prostitution or takes or attempts to take person, or causes a person to be taken, from one place to another for the purpose of prostitution or causes or induces a person to carry on prostitution, shall be punished in the manner indicated in the Section. Section 6 prescribes that any person who detains any other person, whether with or without his consent, in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such" person shall be punished in the manner indicated in the Section 6 prescribes that any person who detains any other person, whether with or without his consent, in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person shall be punished in the manner indicated in the Section.

5. The facts giving rise to this case, as is evident from the FIR as well as the statements recorded during investigation, is that a raid was conducted in the aforesaid hotel on 18.9.95 and during raid, three girls were found concealing themselves under a bed in the ground floor of the hotel. The Petitioners and two others were apprehended while trying to escape. The undergarments of the Petitioners were seized and sent for examination. The report of the District Forensic Sdenye Laboratory, Khurda, indicates that the said undergarments sent for examination did not contain any semen stain. From these facts I am of the view that offences so far as Sections 3, 4, 5 and 6 are concerned are not at all attracted.

So far as Section 7 of the Act is concerned, it prescribes that any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises, which are within the area or areas notified under Sub-section (3), or which are within a distance of two hundred meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of police or the Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

"Prostitution" has been defined in Section 2 (f). The said definition says that "prostitution" means the sexual exploitation or an abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly. Therefore, the word "prostitution" mentioned in Section 7 has to be read as it has been defined in Section 2 (f) of the Act. Section 2 (f) of the Act indicates that there should be sexual exploitation or abuse of persons for commercial purposes. Therefore, there has to be an element of commercial purpose which means offer of money by the customer and acceptance of the same by the person who offers her body in lieu of consideration received. So far as the present case is concerned there is no evidence to indicate that the Petitioners offered money to the girls who were found in the lodge or that the girls even offered to have sexual intercourse with the Petitioners. The only material that is available against the Petitioners is that when the raid was conducted, they were trying to escape. There is no material also to indicate that the Petitioners were involved in sexual exploitation in any manner. On this material alone the offences, as alleged, under Sections 3, 4, 5, 6 and 7 of the Act are not made out. Therefore, I am of the view that this is a fit case where the order taking cognizance should be quashed.

6. Accordingly, I allow the application and quash the order dated 18.9.96 taking cognizance of the offences under Sections 3, 4, 5, 6 and 7 of the Act against the three Petitioners, namely, Sushanta Kumar patra alias Hemants Kumar Das, Aditya Prasad Patra and Smurtiranjana Ray.