

BAIL SLIP

The Appellant/Accused No.2 was directed to be released as per order of this Court dated 6.3.2014 made in M.P.No.1 of 2014 in CrI.R.C.No.206 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2015

Pronounced on : 27-11-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 206 of 2014

G. Justus Abraham ... Revision/Petitioner/
Appellant/Accused NO.2

Versus

State represented by
Deputy Superintendent of Police
Anti Traffic Cell CBCID
Chennai - 600 002 ...Respondent/Respondent/
Complainant

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code against the Judgment dated 14.02.2014 passed in Criminal Appeal No. 68 of 2012 on the file of the IV Additional District Sessions Judge, Chennai confirming the Judgment dated 29.03.2012 passed in C.C. No. 7555 of 2010 on the file of the IV Metropolitan Magistrate at Saidapet.

For Petitioner: Mr. K. Sridhar
for Mr. S. Raveekumar

For Respondents: Mr. V. Arul
Government Advocate (CrI.side)

ORDER

The second accused in C.C. No. 7555 of 2010 on the file of the learned IV Metropolitan Magistrate, Saidapet is the revision petitioner herein. He was implicated as an accused in Crime No. 5 of 2008 for the offences punishable under Sections 4 (1), 5 (1), (d) and 7 (2) of Immoral Trafficking Prevention Act (hereinafter called as the Act) read with

Section 376 of I.P.C. Upon trial in C.C. No. 7755 of 2010, the trial court convicted A-2/the petitioner herein for the offence under Section 5 (1) (d) of the Act and sentenced to undergo rigorous imprisonment for a period of three years, with fine of Rs.2000/-, in default to undergo rigorous imprisonment for three months. Aggrieved by the conviction and sentence imposed on him, the petitioner has filed Criminal Appeal No. 68 of 2012 before the learned IV Additional Sessions Judge, Chennai and the same was dismissed by a judgment dated 14.02.2014. It is the aforesaid decisions of the courts below which are questioned in this Criminal Revision Case.

2. The case of the prosecution is that the first accused Sukumar and the second accused Justus Abraham have paid a sum of Rs.5,000/- to the fourth accused Periyasamy for procuring ladies for them to get sexual pleasure. Accordingly, the fourth accused engaged one Kavya and Kavitha @ Suganya and asked them to proceed to M.B. International Hotel at Egmore, Chennai. On such instruction, the aforesaid two ladies proceeded to room No.102 on 02.12.2008 at about 12.30 pm where A-1 and A-2 instigated them to have sexual intercourse with them and the accused have performed sexual intercourse with the girls. Thus, according to the prosecution, both the accused are guilty of the offence under Section 5 (1) (d) of the Act. The third accused in this case is the Manager of the M.B. International Hotel, who allotted room to the second accused not in his original name but in a fictitious name viz., A.S. Daniel. As far as A-4 is concerned, he, as a broker, received money from A-1 and A-2 to procure the girls and asked the two girls to come to Albert Theater near Egmore. Accordingly, the two girls have come to Egmore and A-4 he paid to them Rs.3,500/- and taken them to the hotel. Thus, the fourth accused is guilty of the offence punishable under Section 4 (1) and 5 (1) of the Act.

3. The learned counsel appearing for the petitioner would contend that both the courts below have failed to appreciate the evidence on record in the proper perspective. The trial court as well as the appellate Court have simply brushed the material contradictions in the version of the prosecution witnesses with regard to the time of occurrence. According to the counsel for the petitioner, there is no separate complaint given by the victim girls complaining that they were forcibly made to engage in prostitution. It is further contended that the statement of the two girls were recorded by the Magistrate before they were given permission to go with their relatives from the Government Home. However, when PW9, one of the victim girls was examined during the course of trial, she has stated that she was not compelled or coerced to engage herself in prostitution and she was arrested

when she was merely talking with the other girl. She further deposed that she was arrested only on mere suspicion. Therefore, PW9 was treated as a hostile witness. Even in the cross-examination of PW11, another victim girl, she deposed that at the time when she gave the statement before the Magistrate soon after arrest, out of fear, she did not disclose that she was taken to the hotel by Periyasamy. She further deposed that she did not depose anything to the Magistrate as regards the sexual intercourse the accused had with her. Thus, the deposition of PW11 before the Magistrate soon after arrest and during the course of trial are contradictory to each other.

4. Next, it is contended on behalf of the petitioner that the investigation officer, who was examined as PW1 in this case, has stated that he received a tip off at about 14.15 hours on 27.12.2008 regarding prostitution being carried on in M.B. International Hotel at Egmore. Thereafter, he has requested Jabaraj and Parameswari attached to a Non-governmental organisation to come to Egmore to witness the raid to be conducted by him. Further, there is variation in the time of raid in the hotel. According to PW12, Jabaraj, on the request made by PW1, Inspector of Police, he came from his office at Arumbakkam to Egmore Railway Station at 3.15 p.m. whereas, according to PW1, on his request, PW12 came to Egmore Railway Station at about 2.30 p.m. on 27.12.2008 and the raid was conducted at about 2.30 p.m. Thus, there are lot of difference in the time at which the raid was conducted in the hotel. The learned counsel further contended that PW1, Inspector of Police, has not produced his general diary before the trial court to show the time at which the raid was conducted. According to PW1, in his cross-examination, on the next day viz., 28.12.2008 at about 6.00 am, he has arrested A-4 Periyasamy near Poonamallee in the presence of witness Jabaraj and Parameswari. Whereas, PW12, Jabaraj in his deposition has stated that he went to the Police Station at about 6.00 am on 28.12.2008 and A-4 was arrested at 7.00 am near Nallammal Hotel opposite to Albert Theater at Egmore. Thus, there is a total contradiction with respect to the time of arrest of A-4, , as deposed by PW1 in this case.

5. The learned counsel for the petitioner further contends that there is total procedural violation committed by the prosecution in carrying out the raid and it was not taken note of by the courts below. According to the counsel for the petitioner, before conducting raid of this nature, PW1 ought to have taken along with him two reputed persons in the locality as witnesses but that was not done by him. Rather, he has asked Jabaraj and Parameswari, attached to a Non-governmental organisation at Arumbakkam to stand as a witness in this case. The learned counsel for the petitioner further

contended that the raid conducted by PW1, Inspector of Police is without jurisdiction. As per the Act, a raid has to be conducted only by the officials of the Anti-vice Squad and therefore, the entire case projected by the prosecution is vitiated. Further, PW1 has not given intimation to the higher authorities, as required, before conducting a raid nor he has proved that any such intimation has been given by him.

6. The learned counsel for the petitioner would further contend that PW2, 3 and 9 have turned hostile in this case. PWs 7 and 8 have deposed in their cross-examination that they did not know anything about the occurrence. However, this piece of evidence has not been properly appreciated by the Court below.

7. In order to lend support to his contentions, the learned counsel for the petitioner relied on the decision rendered by the Kerala High Court in the case of (T. Jacob vs. State of Kerala) reported in AIR 1971 Kerala 166 and contend that prostitution in itself is no offence except in the manner given under Sections 7 and 8 of the Act. It is further contended that there must be more than one customer of the prostitute to prove it and in the absence of the same, the entire case projected by the prosecution has to be held vitiated.

8. The learned counsel for the petitioner also relied on the decision of the Honourable Supreme Court in the case of (Delhi Administration vs. Ram Singh) reported in AIR 1962 Page 63 = AIR 1962 SCR (2) 694 to contend that it is only the Special Police Officers appointed under the Act to enforce the provisions of the Act and the invocation of such power by the local police is without jurisdiction.

9. The learned counsel for the petitioner submits that there must be evidence to show that there was inducement and compulsion compelling the victim girls to engage in prostitution. In the present case, the victim girls have come to the hotel room on the instruction of A-4 after receiving money from him. Even one of the victim girls stated that there was no compulsion or coercion and she was arrested by the police when she was talking with the other victim girl on suspicion. At any rate, there is no evidence to show that revision petitioner/A-2 had compelled the victim girls to engage themselves in prostitution. When such evidence is not available, the orders passed by the courts below has to be set aside.

10. Per contra, the learned Government Advocate (Criminal side) appearing for the Respondent-State would contend that the Government has issued G.O. Ms. No.618, Social

Welfare Department dated 13.04.1987 wherein it was ordered that every police officer appointed by the State, not below the rank of an Inspector of Police, are authorised to be the Special Police Officer for dealing with the offences under the Act inter alia to assist the Special Police Officer concerned. This Government Order dated 13.04.1987 was issued following the earlier order passed in G.O. Ms. No.1266, Home (Police.XIV) Department dated 21.11.2003 wherein it was ordered that the nomenclature of Anti-Vice Squad functioning under the control of the Additional Director General of Police, Crime Branch, Criminal Investigation Department, Chennai be changed as Anti-Trafficking Cell. Therefore, according to the learned Government Advocate, the raid conducted by PW1 and the consequential arrest and detention by PW1 is valid and PW1 is competent to carry out investigation in this case.

11. The learned Government Advocate would further contend that the prosecution has established that A-4, at the instance of A-1 and A-2, has procured the victim girls for the purpose of carrying out prostitution. Even according to the victim girls, they knew A-4 even prior to the incident and on his request to go over to the hotel, they went to the hotel after receipt of money. A-4 had taken the victim girls to room No.102 in the hotel knowing fully about the purpose for which they were taken there. The victim girls were also made to clearly understand the reason why they were taken to the hotel. Even both the victim girls did not deny the fact that they were subjected to sexual intercourse by the A-1 and A-2 in the hotel room. Therefore, the prosecution has proved the ingredients of the provisions of Section 5 (1) (d) of the Act. Both the courts below have appreciated the evidence made available by the prosecution in extenso and came to the conclusion that the revision petitioner is guilty of the offence and it does not call for any interference by this Court.

12. I heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the State. I also carefully examined the judgment of conviction passed by the courts below.

13. At the outset, the contention of the counsel for the petitioner that the investigation officer in this case is incompetent to conduct the raid and therefore the entire case projected by the prosecution is vitiated cannot be countenanced. As rightly pointed out by the learned Government Advocate (Criminal side) as per G.O. Ms. No.618, Social Welfare Department dated 13.04.1987 issued by the State Government, every police officer appointed by the State, not below the rank of an Inspector of Police, are authorised to be the Special Police Officer for dealing with the offences under

the Act inter alia to assist the Special Police Officer concerned. It is not disputed that PW1 at the time of the incident was holding the post of Inspector of Police and therefore, as per the aforesaid Government Order, he is competent to register the case and to cause arrest of the accused.

14. On perusal of the evidence on record, it is seen that PW1, who is the investigation officer in this case, has deposed that he received reliable information regarding prostitution being carried on in a hotel at Egmore around 02.15 hours on 27.12.2008. At the time of receipt of such information, he was in the Police Station at Guindy. Immediately, he contacted PW12 and one Bhuvaneswari attached to Just Trust, a Social Welfare Organisation at Arumbakkam to accompany him in the course of raid and to stand as witness. According to PW1, he reached Egmore Railway Station at 03.15 hours and PW12 and Bhuvaneswari reached Egmore Railway Station at 03.30 hours from there they proceeded to the hotel at Egmore. Whereas, according to PW12, PW1 has called him at about 3.00 p.m. to stand as a witness in the raid to be conducted by him and he reached Egmore railway station 3.15 p.m. along with Parameswari. Thus, there is a variation in the timing with regard to the phone call made by PW1 to PW12 and the time at which they have reached the Egmore Railway Station.

15. According to the prosecution, A-4 asked the victim girls to come to Egmore near Albert Theater at about 12.30 p.m. where he met the two girls and handed them Rs.3,500/- and he accompanied the girls to the hotel room where A-1 and A-2 were present. As soon as the girls entered the room, A-1 and A-2 pounced on them, but it was resisted by the victim girls. It is the further case of the prosecution that A-1 and A-2 had sexual intercourse with the victim girls. Whereas, in the statement given by Kaviya @ Suganya, one of the victim girls before the Magistrate, A-4 Periyasamy asked them to come to Egmore by stating that he will take them to Beach and other places. According to the victim girl, believing such representation, she came to Egmore along with Kavitha where A-4 paid Rs.3,500/-. However, they were arrested by the police on suspicion only. Thereafter, they were taken to the Protective Home for Children. After recording the statement, the Magistrate permitted the victim girl to accompany her father. Similarly, the other victim girl has deposed that they were arrested on mere suspicion.

The specific version of the victim girl Kavitha is that "அவர் எங்களை வேறு இடத்திற்கு கூட்டிச் சென்றுவிட்டார். அந்த இடத்தில் போலீசார் வந்து சந்தேகத்தின் பேரில் எங்களை பிடித்துக்

கொண்டார்கள் /" Therefore, the whole case projected by the prosecution is not supported by the victim girls.

16. Further, there is difference in the time of arrest of A-4 Periyasamy. According to PW1, at about 6.00 am in the morning, he arrested A-4 near Poonamallee whereas, according to PW12, Jabaraj A-4 was arrested at 7.00 in the morning near Nallammal Hotel opposite to Albert Theater at Egmore on 28.12.2008. This is one of the contradictions in the case projected by the prosecution which has not been taken note of by the courts below. Further, PW1, in his cross-examination has stated that even though the Anti-trafficking Wing Office is situate in Chintadripet, within one kilometer from Egmore, PW1 did not give any prior intimation to the said office. This is one of the procedural irregularities committed by the PW1 and he had independently carried on the raid without informing the concerned officials. When specific question was put to PW1 in the cross-examination, he has replied that he does not how many rooms were there in the hotel and what are all the furnitures available in the room. PW1 also did not produce the general diary to show that he has in fact carried out the raid on the relevant date and time.

17. PW15 was examined on the side of the prosecution, who was working as Superintendent of Police in Anti-Vice Squad CBCID Office during the relevant time. PW15 has taken over the investigation from PW1 and he has filed the charge sheet in this case. In his deposition, he has stated that to show the date and time of raid and the arrest of the accused in this case, PW1, who initially investigated the case, did not produce the general diary. PW15 also admitted that there is nothing on record to show that prior to this incident, there was any meeting between A-4 and the victim girls. He also admitted that the rough sketch regarding the place of incident has not been prepared and produced before the Court. He also admitted that A-2 was not sent for medical examination on the same day.

18. With this background, it is necessary to refer to the decision of the Kerala High Court, in the case of (T. Jacob vs. State of Kerala) reported in AIR 1971 Kerala 166 relied on by the counsel for the petitioner, wherein it is "held as follows:-

"5. In this regard, we have to consider whether the prosecution on the basis of the statement referred to above of these witnesses has made out any case against the revision petitioner. There is no evidence that prior to the incident either the revision petitioner or the 2nd accused have any occasion to meet and carry on

prostitution. Neither was there any evidence that the 2nd accused had been in the habit of conducting prostitution in indiscriminate manner. The word 'prostitute' as defined in Section 2 (3) means the female who offers her body for promiscuous sexual intercourse for hire, whether in money or kind.....

6. It is then contended that the offence against the revision petitioner might fall under Section 5 (1) (d). Thereagain, it is necessary that the revision petitioner should have caused or induced the 2nd accused to carry on prostitution. From the evidence on record, such an inference cannot be drawn. As a matter of fact, there was nothing to show that the revision petitioner was in any way connected with the 2nd accused prior to the incident. No witness on the prosecution side has come forward to state any previous conduct on the part of the revision petitioner. Without any such evidence, it cannot be said that he would have caused or induced the 2nd accused to carry on prostitution, as I have already stated, is suggestive of more than a solitary instance of prostitution, which means that there must be indiscriminate sexuality requiring of more than one customer of the prostitute before she can be held guilty."

19. As mentioned above, the victim girls themselves did not support the case of prosecution. They have merely stated before the Magistrate at the earliest point of time that they were arrested by the respondent police on suspicion. There are lot of variations with regard to the deposition of PW1 and PW12 with reference to the time of their arrival in the hotel and the arrest of A-4 on the next date of occurrence. The prosecution has not produced any evidence to show that there was meeting of minds between the victim girls and the broker, A-4 prior to the incident and therefore, the ingredients of the offence under Section 5 (1) (d) of the Act cannot be pressed into service. The courts below have simply brushed aside the inconsistencies in the version of the prosecution witnesses and passed the order of conviction.

20. For all the above reasons, the Judgment dated 14.02.2014 passed in Criminal Appeal No. 68 of 2012 on the file of the IV Additional District Sessions Judge, Chennai confirming the Judgment dated 29.03.2012 passed in C.C. No. 7555 of 2010 on the file of the IV Metropolitan Magistrate at Saidapet are set aside. The Criminal Revision Case is

allowed. The bail bond, if any, executed by A-2/ revision petitioner herein shall stand cancelled. The find amount, if any, paid by the A/2.petitioner shall be refunded to him.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The IV Additional District Sessions Judge
Chennai
2. -DO-Thro'The Principal Sessions Judge,
Chennai
3. The IV Metropolitan Magistrate
Saidapet, Chennai
4. -do-Thro'The Chief Metropolitan Magistrate,
Egmore, Chennai
5. The Superintendent Central Prison,
Puzhal, Chennai
6. The Deputy Superintendent of Police
Anti Traffic Cell
CBCID, Chennai 600 002
7. The Public Prosecutor High Court,
Madras

+6 ccs to Mr.S.Ravee Kumar, Advocate sr nos.64936,
64791,

सत्यमेव जयते

Cr1RC. No. 206 of 2014

aa30/11/2015

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