

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i)

CRR No.3883 of 2015 (O&M)

Kishan

...Petitioner

VERSUS

State of Haryana

...Respondent

(ii)

CRR No.209 of 2016 (O&M)

Vasudev

...Petitioner

VERSUS

State of Haryana

...Respondent

Date of Decision: August 24, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.Sunil Sihag and Mr.Jangvir Singh Hooda, Advocates,
for the petitioners.

Mr.Kuldeep Sharma, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected revisions as the point for determination in both the cases is the same.

The above-mentioned revision petitions have been filed by petitioners Kishan and Vasudev, challenging the impugned judgment of conviction dated 14.10.2013 and order of sentence dated 16.10.2013 passed by learned Addl. Chief Judicial Magistrate, Palwal, vide which the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of one year each under Section 3 and to undergo rigorous

imprisonment for a period of three years under Section 5 of the Immoral

Traffic (Prevention) Act 1956 and also to pay fine of ₹1000/- and in default of payment of fine, to further undergo imprisonment for a period of six months each under above said Sections and also challenging the judgment dated 09.09.2015 passed by learned Addl. Sessions Judge, Palwal, vide which appeal filed by petitioners was dismissed. Both the sentences were ordered to run concurrently.

Notice of motion was issued. Learned State counsel appeared and contested the petitions.

Lower court record was also requisitioned.

From the record, I find that the challan was presented against Vasudev, Nagender, Randhir, Bimla alias Kamla, Hina, Doli alias Pooja and Kishan in case FIR No.192 dated 16.05.2008 under Sections 3, 4 and 5 of the Immoral Traffic Act. The brief facts of the case as noted down in the judgment passed by learned ACJM, Palwal, are as under:-

“On being sent up by police station Camp Palwal, all the above named accused are facing trial under sections 3, 4, 5 of Immoral Traffic Act. In brief the case of the prosecution is that on 16.5.2008 Inspector Suraj Mal along with SI Ram Rattan, HC Abhhas Khan, C. Mohd. Ikbal, C. Shish Pal, L/C Manisha, L/C Amandeep Kaur were on patrolling duty for prevention of crime and were present at Devi Lal Park where informer informed that Kishan owner of KK Dhaba and Vasudev Manager of KK Dhaba used to supply girls in the rooms of their KK Dhaba for prostitution, if raid is conducted and a decoy customer is sent, then girls can be recovered from the rooms of the Hotel. On this information Inspector/SHO constituted a raiding party. Constable Mohd. Ikbal was asked to act as a decoy customer in civil clothes. Investigating officer put his initial of SB on currency note of Rs.1000/- bearing No.7-AB-035800 and the same was handed over to Constable Mohd. Ikbal. Memo of handing over note was also prepared and constable Mohd. Ikbal was instructed to deal with the owner and Manager of the Hotel to arrange a girl for prostitution. When he will proceed with girl towards a room, he will give signal to the raiding party by putting waiving his hand over his head. After receiving signal, Inspector SHO along with his member of raiding party entered KK Hotel.

Manager was found present at counter. On inquiry Manager disclosed his name as Vasudev. On search of Vasudev Rs.1065/- were recovered from the pocket of shirt of Vasudev. Currency note of Rs.1000/- bearing No.035800 was also recovered. Currency note was also taken into possession. Rooms of the Hotel on the first floor were searched and from one room one boy and girl were present involving in immoral activities who were apprehended. On inquiry girl disclosed his name as Heena while the boy disclosed his name as Nagender. On the search of second room one women and one person were present who were also involved in immoral activities. On inquiry women disclosed her name as Bimla and the person disclosed his name as Randhir Singh. From the third room, one girl and constable Ikbal were present. Girl disclosed her name as Dolly, Kishan Owner of the Hotel was not present. Owner of the Hotel Kishan and Manager Vasudev were arranging girls for immoral activities in the rooms of the hotel and thereby committed an offence under sections 3/4 and 5 of the Immoral Traffic (Prevention) Act, 1956. Investigating officer prepared rukka and sent it through C. Shishpal for registration of the case and on which this case was registered. Investigation commenced, during investigation, IO prepared site plan, statements of witnesses were recorded. Accused was arrested and after completion of investigation, the challan under section 173 Cr.P.C. was prepared.”

Learned ACJM, Palwal, after appreciating the evidence, convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Palwal, vide judgment dated 09.09.2015.

Aggrieved from the above-said judgments, present revision petitions have been filed.

Section 13 of the Immoral Traffic (Prevention) Act, 1956, provides as under:-

“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) The District Magistrate may, if he considers it necessary

or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally: Provided that no such power shall be conferred on-

(a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;

(b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.]

(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; and

(b) the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

[(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.] ”

Learned counsel for the petitioner relied upon the law laid down by the Hon'ble Supreme Court in ***Delhi Administration vs. Ram Singh, 1962 AIR (SC) 63***, in which it is held Expression 'dealing with the offence' includes power of investigation and Special Police Officer is exclusively competent to investigate. In the present case, no notification has been produced by the prosecution to show that as to who was designated as Special Police Officer for which area. Secondly, the witnesses who have appeared in this case, have nowhere stated that they are Special Police

Special Police Officer should not be less than in the designation of Inspector. Though an Inspector is the Investigating Officer of this case, but he has not been examined in this case as the evidence of the prosecution has been closed by order by the Court. Therefore, prosecution has failed to prove as to who was designated as Special Police Officer for that specific area to investigate the case.

Learned counsel for the petitioners also cited judgment passed by Hon'ble Karnataka High Court in *M.Rajeshwari vs. State, 2002 (1) RCR (Criminal) 202*, in which it is held that Investigation must be conducted by Police Officer not below rank of Inspector who has been specially appointed for area. In that case, the investigation was conducted by Sub Inspector, which is illegal and proceedings were quashed by relying upon the above-said law laid down Delhi Administration's case (supra).

Keeping in view the above discussion, I find that the prosecution has failed to prove its case against the accused. Therefore, the impugned judgment of conviction 14.10.2013 and order of sentence dated 16.10.2013 passed by learned ACJM, Palwal and judgment dated 09.09.2015 passed by learned Addl. Sessions Judge, Palwal, are set aside and petitioners are acquitted of the charges framed against them.

Therefore, finding merit both the revision petitions, the same are allowed.

Since, petitioners are on bail, their bail bonds stand discharged.

August 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No