Raj Kumar *v.* Union of India and another

Kapur, J.

the information to the State of Rajasthan for communication to the petitioner, there was no resignation before the Government of India upon which it could act? In our opinion, the question must be answered against the petitioner. We, therefore, hold that, at least in the circumstances of this case, it was not open to the petitioner to withdraw the resignation without the permission of the Government of India. We must advert to the decision of their Lordships of the Supreme Court in *Jai Ram's case* (1). That was a case of retirement which would be fundamentally different from that of resignation. The case of retirement would at the most be akin to a case where an employee writes to the Government asking for permission to put in his resignation on some future date. In such a case it may be open to him not to submit his resignation and change his mind. The said decision would, therefore, have no applicability to the facts of this case. It must be remembered that under Article 310 of the Constitution Civil servants hold their posts at the pleasure of the President or the Governor, as the case may be. That being so, the President or the Governor may say to the employee that "you have communicated an intention to terminate the employment and I will not now permit you to withdraw your resignation and would, on the other hand, act on the same."

From the above discussion it follows that the Government of India was justified in ignoring the petitioner's letter of withdrawal and acting on his resignation. The petition must, therefore fail and is dismissed. There would, however, be no order as to costs.

Grover, J.

A. N. GROVER, J.—I agree.

B.R.T.

REVISIONAL CRIMINAL

Before R. S. Narula, J.

AMAR SINGH,—*Petitioner*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 267 of 1965

1965

July, 6th

Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956)—*S.* 15(2)—*Provision as to the association of a woman in the search party—Whether mandatory—Non-compliances thereof—Whether fatal to the prosecution—Powers of Police officers under section* 15(1)—*How to be exercised.*

Held, that the object of section 15(2) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, is to provide a safeguard against the police in its zeal overlooking certain things or presuming other things. The still more important object of the provision is to inspire confidence in the process of law by associating respectable neighbour of the same sex as the person who is likely to be affected by the search. For obvious reasons, the Legislature has insisted on certain safeguards being provided for charging people with such serious offences involving moral turpitude. The language of the provision relating to the association of a woman in the search party is mandatory. A lady is bound to be involved in the occurrence in every case. The respect and honour of that lady is going to be involved in the prosecution even if she is not an accused. One of the ways to give her mental satisfaction is that a lady of her locality has to be a witness of the search against her before her reputation can be tarnished in the society by bringing a charge under this Act in relation to her. Hence the non-inclusion of at least one respectable woman of the locality in the searching party is fatal to the prosecution of an accused person under the Act.

Held, that no doubt the special police officer and other persons taking part in proceedings under section 15(1) and (2) of the Act are protected against liability—civil or criminal—in respect of any thing lawfully done by them in connection with or for purposes of a search under those provisions, but the question would always be the extent to which the action of such persons is "lawful". The powers of police officers acting under section 15(1) of the Act have to be exercised with the greatest care and caution. Elementary principles of decency must never be forgotten even in relation to conduct of a search under section 15(1) of the Act.

Petition under section 439, *Criminal Procedure Code, for revision of the order of Shri Manmohan Singh Gujral, Sessions Judge, Ambala, dated the 2nd February,* 1965, *affirming that of Shri Shanti Sarup, Chief Judicial Magistrate, Ambala, dated the* 31*st December,* 1964, *convicting the petitioner.*

P. S. MANN, ADVOCATE, for the Petitioner.

M. R. CHHIBBAR, ADVOCATE FOR ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Narula, J.

NARULA, J.—Amar Singh, son of Ram Ditta Singh, aged about 36 years, a Government servant employed in the Industries Department of the Punjab Government, residing at quarter No. 16-A in Sector 20-B in Chandigarh has filed this revision petition to set aside his conviction under

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sections 3(1) and 4(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred to as the Act) and to set aside the sentence of rigorous imprisonment for one year and fine of Rs. 50 on the first count and the sentences of rigorous imprisonment for six months on the second count, which convictions and sentences originally imposed by the Chief Judicial Magistrate, Ambala, on 31st December, 1964, have been upheld in appeal by Shri Manmohan Singh Gujral, Sessions Judge, Ambala, in his judgment dated 2nd February, 1965, which is sought to be revised in this case.

According to the prosecution story, Mohinder Singh (P.W. 3) had come to his present residence in March, 1964, after exchanging his original quarter with Mohan Singh (P.W. 1). The ground floor of his present premises is occupied by Mehnga Singh (P.W. 5). On July 25, 1964, Mohinder Singh (P.W.) went to the police post in Sector 19 at Chandigarh and from there went with S. I. Bakhshi Om Parkash (P.W. 10) to P.W. 7 Shri Daljit Singh Dhillon, Superintendent of Police, who is a special police officer appointed for carrying out raids, etc., in cases under the Act. Before that Officer, Mohinder Singh (P.W.) gave statement Exhibit P.A. In this report, Mohinder Singh stated that Mehnga Singh had complained to him about the accused running a brothel at his residence and that at about 6.00 p.m. on that day Mehnga Singh had introduced the accused to this witness and in order to put an end to the kind of vice complained of by Mehnga Singh, the witness had talked to the accused and subsequently gone to the house of the accused and had settled with him to obtain the person of his wife for sexual intercourse with her on payment of a sum of Rs. 5 and on giving a pint of liquor to the accused. Mohinder Singh (P.W.) produced currency note Exhibit P. 1 of the denomination of Rs. 5, the number of which was noted. It is alleged that this witness went to the house of the accused and gave this currency note and a pint of liquor to the accused, on getting which Amar Singh left the witness and his wife Charan Kaur in the room and himself walked into the kitchen of the house. On the other side the Special Police Officer Shri Daljit Singh Dhillon had organised a raid consisting of Vishnu Rai (P.W. 4), a pavement cycle repairer, Bachan Singh (P.W. 8) and some police officials. A lady constable is also said to have been included in this raiding party.

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Before reaching the house of Amar Singh accused, the Special Police Officer is stated to have associated Mehnga Singh (P.W. 5) also in the party. It is then alleged that on getting a signal, the party raided the room of the accused which was just opposite a similar room on the same floor occupied by some other Government servant in which light was on at that time. The allegation is that the accused had obliged the raiding party by not even bolting the room from inside and all that the party had to do was to push open the door to find Mohinder Singh (P.W.) interlocked with the wife of the accused in the course of sexual intercourse. Amar Singh accused was seen sitting in the kitchen and taking liquor. *Vide* memorandum Exhibit P.C., the five rupee currency note was taken over from the accused and he as well as his wife were arrested. Even if all the allegations were correct, no offence against the wife could be made out and, therefore, she was discharged on 2nd September, 1964.

Placing reliance on the testimony of P.Ws. Mehnga Singh, Mohinder Singh and Vishnu Rai, the Chief Judicial Magistrate convicted the petitioner as stated and his conviction and sentences were upheld in appeal. This revision petition was admitted by Khanna, J., on 24th March, 1965. On April 26, 1965, Jindra Lal, J., declined to grant bail to the petitioner but directed that the revision petition be heard before vacation. Criminal Miscellaneous No. 547 of 1965 for granting bail to the petitioner was, however, granted by S. K. Kapur, V. J., on 21st June, 1965, and now the main revision petition has come up before me.

Mr. P. S. Mann, the learned counsel for the petitioner, has urged several points in support of the revision petition. He has taken me through a substantial part of the record of the case and has pointed out various infirmities and improbabilities in the prosecution story and has tried to argue that the case of the prosecution is not believable. He has also argued that even if the allegations of the prosecution could be believed the case against the petitioner could not fall under sub-section (1) of section 3 of the Act but could at best fall within the mischief of sub-section (2) of that section. The effect of this change would be that the fetter of the minimum sentence of one year prescribed under sub-section (1) of section 3 would be thrown

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off by the petitioner if his case could be covered only by sub-section (2) of section 3 of the Act. Though there seems to be some force in the second contention of the petitioner and there may be some life in his first contention, I do not propose to deal with any of these points at any length in view of the third contention of the learned counsel having prevailed with me. This contention is that the conviction of the petitioner is liable to be set aside as the same is vitiated on account of non-compliance with sub-section (2) of section 15 of the Act. It is argued that compliance with this provision particularly in so far as it relates to the necessity of associating a lady in the search under this Act is mandatory. Section 15(2) of the Act reads as follows :—

"15. *Search without warrant.*

(1) * * * *

(2) Before making a search under sub-section (1) the special police officer shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do."

It is not disputed that the entire relevant prosecution evidence in this case relates to the search under section 15(1) of the Act which was conducted by the Special Police Officer along with the raiding party.

The objection of Mr. Mann in this respect is two-fold. It is firtsly contended by him that the witnesses of the search, that is, the members of the raiding party, were not respectable inhabitants of the locality but had been drawn from distant places. Even the respectability of at least one of the witnesses has been doubted by the learned counsel. It is, however, the second objection which is more formidable and has weighed with me. This is to the non-inclusion of at least one respectable woman of the locality in the search party. Mr. M. R. Chhibber, learned Counsel for the State, has argued that the intention and object of the provision has been substantially fulfilled by including a lady constable in the raiding party. I am not able to

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agree with this contention. The object of the section is to provide a safeguard against the police in its zeal overlooking certain things or presuming other things. The still more important object of the provision is to inspire confidence in the process of law by associating respectable neighbour of the same sex as the person who is likely to be affected by the search. In any case, it is not shown that the lady member of the police was an inhabitant of the locality at all. It is next urged by the learned State counsel that there is practical difficulty in finding women of the locality to become witnesses to such searches. This may or may not be so. In fact, the provisions of sub-section (3) of section 15 of the Act arm the police with ample power to have any person, declining to become a witness to a search, prosecuted under section 187 of the Indian Penal Code, if such person, be it a lady or a man, without reasonable cause, refuses or neglects to attend and witness a search under section 15(1) of the Act. The Court has to administer law as it is and in case of any practical difficulty it is for the authorities concerned to approach the appropriate Legislature to amend the law. It cannot possibly be urged that there was no respectable women living in the locality, nor has it indeed been shown that any attempt was at all made to associate one in the search.

As a last resort, it is contended by the counsel for the State and that the provisions of sub-section (2) of section 15 of the Act are merely directory and not mandatory and that non-compliance with the same is not fatal to the prosecution. This aspect of the matter came up for consideration before Bedi, J., in *Harnam Singh* v. *State of Punjab* (1). In that case the learned Judge held that a search made in contravention of the requirements of section 15(2) of the Act is illegal. No doubt the Court also went into the evidence produced at the trial in that case and held that the witnesses to the search were not only persons not belonging to the locality but were persons of easy virtue and were always at the beck and call of the police whereas the accused was a respectable person and, therefore, the benefit of doubt had to be given to the accused, but the ratio of the judgment was that a search in contravention of section 15(2) of the Act was illegal. In the instant case also, it is admitted by Mohinder Singh,

(1) A.I.R. 1964 Pb. 436.

P.W., that on an earlier occasion he had sexual intercourse with one Billo, wife of Narinder Singh, tailor, as a result of which Narinder Singh was challaned by the police under the Act. A person who goes about like this is a person of the easiest virtue and can hardly be relied upon for ruining the reputation of a respectable Government servant and his wife without strict compliance with the provisions of law. The learned Sessions Judge also was not prepared to place implicit reliance on the evidence of this witness but seems to have relied too much on the evidence of the pavement cycle repairer and Mehnga Singh. In the circumstances of this case I think those witnesses are of extremely doubtful veracity. Admittedly, there was no enmity between Mehnga Singh and the accused prior to this incident. There was, therefore, no reason for him to have gone all the way to Mohinder Singh to make out this plot. Nor is it shown how Mehnga Singh knew that Mohinder Singh was the proper person to arrange a raid of this type. That no neigbhour of the accused or any person residing in that locality was taken into confidence except Mehnga Singh is also rather significant. That for committing an act of this type the accused did not even get the door of the room bolted and instead of sitting outside the room went into the kitchen also renders the story doubtful. The accused is an ex-military man and such persons are normally very jealous of the virtue of their wives. The story of the prosecution, in the circumstances brought on the record, is extremely doubtful, and the observations of Bedi, J., in *Harnam Singh* vs. *The State* (1) fully apply to this case.

The effect of non-compliance with the provisions of section 15(2) of the Act also came up for decision before R. P. Khosla, J., in *Inder Kaur* v. *The State* Criminal Revision No. 1048/1962, decided on 16th August, 1963, wherein it was held by the learned Judge as follows:—

> "There was no answer to the contention that respectables of the locality had not been joined or that of the persons joined none was a woman. It is to be observed that these provisions had been incorporated in the enactment not without purpose. Charge is a serious one. Safeguard is provided that the requisite evidence for its proof should be drawn from particular sources only as envisaged."

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I am in respectful agreement with the above observations. For obvious reasons, the Legislature has insisted on certain safeguards being provided for charging people with such serious offences involving moral turpitude. The language of the provision relating to the association of a woman in the search party is mandatory. A lady is bound to be involved in the occurrence in every case. The respect and honour of that lady is going to be involved in the prosecution even if she is not an accused. One of the ways to give her mental satisfaction is that a lady of her locality has to be a witness of the search against her before her reputation can be tarnished in the society by bringing a charge under this Act, in relation to her. I, therefore, consider that the non-inclusion of at least one respectable woman of the locality in the searching party is, in the circumstances of this case, fatal to the prosecution and this petition is entitled to succeed on that short ground.

Before parting with this case, however, I consider it necessary to advert to another aspect of the matter. No doubt the special police officer and other persons taking part in proceedings under section 15(1) and (2) of the Act are protected against liability—civil or criminal—in respect of any thing lawfully done by them in connection with or for purposes of a search under those provisions but the question would always be the extent of which the action of such persons is "lawful". I am inclined to think that powers of police officers acting under section 15(1) of the Act have to be exercised with the greatest care and caution. Elementary principles of decency must never be forgotten even in relation to conduct of a search under section 15(1) of the Act. *In re Ratnamala* (2), Anantanarayanan, J., observed that conduct of a special police officer in proceeding into the bed room of a young girl and pushing open the closed door without the civility of a knock or the warning to her to prepare for the intrusion would be inexcusable unless the officer thereby hopes to gather the evidence which is essential for the proof of any charge. Since prostitution is not an offence, such conduct, according to the learned Judge, is an outrage of the modesty of the girl. It may or may not be necessary to go to that extent, but the manner in which the special police officer and the party are stated to have straightway pushed open the door of the room wherein the

(2) A.I.R. 1962 Mad. 31.

lady was expected to be having sexual intercourse with a person and the lady was thereby committing no offence does not appear to be a matter on which the police officer can be congratulated. Since a special police officer of position and responsibility has been appointed in the State of Punjab to carry out the purposes of the Act, I consider it necessary to put him on the guard by referring to the Madras case.

For the reasons given above, this petition is accepted the conviction and sentence imposed on the petitioner are set aside and he is acquitted of both the charges levelled against him. He is directed to be set at liberty forthwith unless required in connection with some other case.

K.S.K.

REVISIONAL CRIMINAL

Before R. S. Narula, J.

PIARA SINGH,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 571 of 1965.

1965

July, 8th

Code of Criminal Procedure (V of 1898)—*S.* 516-*A—Opium Act—S.* 11—*Opium found being transported in a truck seized—Order for return of truck—Whether can be made before the challan is filed.*

Held, that it is only when an article, of the kind envisaged by section 516-A, Criminal Procedure Code, is produced before a Magistrate during the inquiry or trial of a case that the Magistrate has the jurisdiction to pass an order under that provision of law. Till then he has no jurisdiction to pass any order under section 516-A, Criminal Procedure Code, one way or the other.

Petition under Section 439, *Cr. P. C., for revision of the order of Shri P. N. Thakral, Sessions Judge, Sangrur, dated the* 27*th May,* 1965, *affirming that of Shri K. K. Sethi, Magistrate* I*st Class, Sangrur, dated the* 22*nd April,* 1965, *rejecting the application and ordering the prosecution to submit the challan at the earliest.*

A. S. BAINS, ADVOCATE, for the Petitioner.

K. S. KWATRA, ASSISTANT ADVOCATE-GENERAL, for the Respondent.