

marital home to continue and the learned Magistrate rightly ordered maintenance in the present case.

Bir Singh
v.
Mst. Sibon

Kapur, J.

Mr. Charanjiva Lal Aggarwal urges most vigorously that the husband and wife should be called in this Court and efforts be made to bring about a reconciliation. The learned Magistrate tried that and was unsuccessful, and I do not think it will serve any useful purpose by getting the husband and wife here. I would, therefore, refuse to accept the recommendation and dismiss the petition and discharge the rule.

REVISIONAL CRIMINAL

Before Kapur, J.

JIA LAL *alias* JAI LAL,—*Convict-Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 491 of 1956

Suppression of Immoral Traffic Act (IV of 1935)—Section 5—Offence under, proof of—Practice of getting persons to go and commit sexual intercourse with wives of poor persons in order to prove an offence under the Act deprecated.

1956

June, 7th.

Held, that the proof was of the mere fact that a person was having sexual intercourse with the accused's wife and that he had paid money in this behalf. But this is a far-off step from saying that the accused has been proved to be knowingly living, wholly or in part, on the earnings of the prostitution of another person. Thus no case was proved against the accused and he was entitled to acquittal.

Held further, that the practice of getting persons to go and commit sexual intercourse with the wives of poor persons in order to prove offences under Suppression of Immoral Traffic Act, must be strongly deprecated. It may be that in this particular case the police has acted with

the very best of motives, but the practice is reprehensible, and that this sort of thing will, it is hoped, not be encouraged by those in authority.

Petition under sections 435/439 of Criminal Procedure Code, for revision of the order of Shri Hira Lal Jain, Additional Sessions Judge, Jullundur, dated the 7th April, 1956, affirming that of Shri M. L. Khanna, Magistrate, 1st Class, Jullundur, dated the 22nd December, 1955, convicting the petitioner.

G. C. SHARMA, for Petitioner.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT.

Kapur, J.

KAPUR, J. This rule is obtained against the Magistrate of the District of Jullundur to show cause why the conviction of the petitioner be not quashed. The petitioner was convicted by Mr. Manohar Lal Khanna, Magistrate 1st Class, Jullundur in December, 1955, and sentenced to six months' rigorous imprisonment under section 5 of the Suppression of Immoral Traffic Act. On appeal the order was confirmed by the Additional Sessions Judge, Jullundur.

The case for the prosecution was that the petitioner was living on the earnings of his wife who was being used as a prostitute. The police got hold of a man called Kesar Das and asked him to go and visit this woman for the purpose of procuring evidence against the petitioner under section 5 of the Suppression of Immoral Traffic Act. Kesar Das went with marked money, with a marked bottle of liquor and with a candlestick and there had sexual intercourse with the wife of Jia Lal petitioner. While he was committing this sexual intercourse the police arrived and Jia Lal was arrested and he has been convicted as above.

The evidence against the accused is of Kesar Das who states that he was called by the Inspector and at his suggestion he agreed to go to the house of the accused in order to have sexual intercourse with his (the petitioner's) wife. He first struck a bargain with the petitioner and gave him Rs. 2/- as earnest money and then gave him two five-rupee notes which were marked by the police and then he and the petitioner's wife went into a room and there he had sexual intercourse with the woman. His cross-examination does not disclose that the husband knowingly lives, wholly or in part, on the earnings of the prostitution of a woman. All that it shows is that on one occasion he went to the house of this woman, paid Rs. 10/- to her husband and had sexual intercourse with her. His further cross-examination shows that it was the only occasion when he went to visit this woman.

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P. W. 2 Ved Raj was with the police when they broke into the house of the petitioner and two marked five-rupee notes were found from his person. Gurnam Singh P. W. 4 states that the accused lets his wife for prostitution and lives on her earnings which is just an *ipse dixit* and it does not show what is the source of his knowledge and the same must be said about the statement of Kundan Lal P. W. 5.

Deputy Superintendent of Police Tarlok Singh has appeared as P. W. 7 and he has stated—

“I took up Kesar Das P. W. as a bogus customer. He was asked to contact the accused and see if he wants to put his wife for prostitution. Kesar Das returned and told me that the accused had agreed to place his wife for prostitution for Rs. 10/- on that very night at 10 p.m.

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Consequently I organised a raid party consisting of P. Ws. Kesar Das also joined with a liquor bottle at the premises of the Employment Exchange. I searched the person of Kesar Das and initialled two G. C. notes P. 1 and P. 2 belonging to him and handed over the same to him,—*vide* memo Exh. P.A. along with bottle of liquor, Exhibit P. 3, which was also initialled by me. Kesar Das was directed to go to the house of Jai Lal and I directed Devki Nandan and Ved Raj to supervise the transaction. We halted at a short distance from the house of the accused. I was informed by one of the constables and I accordingly went to the accused's house. The latter was sitting on a *charpai* outside his house. We secured the accused and recovered the two G. C. notes P. 1 and P. 2. I immediately entered the room of the accused and found Kesar Das and the accused's wife lying on a *khes* spread on the floor. A candlestick P. 4 was burning there. On seeing us they both got up; the wife of the accused was not wearing her *salwar*. The G. C. notes, the candlestick, *khes* P. 5 and the bottle P. 3 were taken into possession,—*vide* memo Exhibit P. 8. The bottle was sealed. I wrote out the complaint Exhibit P. C. The formal F. I. R. is Exhibit P. C.1.”

The defence was that Rs. 2/- had been paid to Jai Lal as hire for rickshaw, he being a rickshaw puller. Although the question put to him

with regard to Rs. 10/- is there, but no answer was obtained from him. He denied that he was living on the earnings of a prostitute or was allowing his wife to be used for prostitution. The woman Dalip Kaur has also appeared as a witness (D. W. 1) but all that she did was that she denied the incident.

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It must be taken to be established that Kesar Das was having sexual intercourse with the woman and that he had paid money in this behalf. But that is a far off step from saying that the accused has been proved to be knowingly living, wholly or in part, on the earnings of the prostitution of another person. In my opinion, the case has not been proved against the accused and he is entitled to acquittal.

But before I end this judgment I would like to quote from the judgment of Lord Goddard C. J. in *Brannan v. Peek*, (1)—

“There is another point of much greater importance. The Court observes with concern and disapproval the fact that the police authority at Derby thought it right to send a police officer into a public house to commit an offence. It cannot be too strongly emphasised that, unless an Act of Parliament provides for such a course of conduct and I do not think any Act of Parliament does so provide—it is wholly wrong for a police officer or any other person to be sent to commit an offence in order that an offence by another person may be detected. It is not right that police

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authorities should instruct, allow, or permit detective officers or plain clothes constables to commit an offence so that they can prove that another person has committed an offence. It would have been just as much an offence for the police constable in the present case to make the bet in the public house as it would have been for the book maker to take the bet if in doing so he had committed an offence. I hope the day is far distant when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone; if they do commit offences they ought also to be convicted and punished, for the order of their superior would afford no defence."

And I respectfully agree with these observations and one has only to substitute the word adultery in the context. I must strongly deprecate this practice of getting persons to go and commit sexual intercourse with the wives of poor persons in order to prove offences under the Suppression of Immoral Traffic Act. It may be that in this particular case the police has acted with the very best of motives, but the practice is reprehensible, and I have no doubt that this sort of thing will not be encouraged by those in authority.

In the result I allow this petition, set aside the conviction and make the rule absolute.

A copy of this judgment will be sent to the Government.