

them with costs, they could have made a grievance of the decree of the Court of first instance to this limited extent, but it is difficult to understand what right they had to question the decree with respect to the goods passed in favour of the plaintiffs. But no objection having been taken to the competency of the appeal in the Court of the District Judge, I need not pursue this matter any further. In the instant case, in my opinion, the language of Article 14 cannot, without straining it, be held to bar the plaintiffs' right to institute the present suit as laid in the plaint. So far as the merits are concerned, both the Courts have upheld the plaintiffs' title.

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8. For the reasons given above, this appeal succeeds and setting aside the judgment and decree of the learned District Judge, I restore those of the trial Court. In the peculiar circumstances of the case, however, the parties are left to bear their own costs in this Court.

R.S.

REVISIONAL CRIMINAL.

Before Shamsher Bahadur, J.

STATE,— *Petitioner*

versus

MEHRO AND OTHERS,— *Respondents.*

Criminal Revision No. 10-D of 1960.

Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956)—Offences under—Investigation of—Whether can be held by police officer other than special police officer—Section 13(I) "Dealing with offences"—Meaning of—Whether includes investigation.

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Held, that a police officer, other than a special police officer appointed under sub-section (I) of section 13 of

Suppression of Immoral Traffic in Women and Girls Act, 1956, is not competent to investigate offences under the said Act. The special police officer so appointed is the authority under the Act and is alone competent to investigate such offences.

Held, that the expression "dealing with offences" is wider than "investigation" and an investigation is included in the expression. It is not possible to spell out the police functions under the heading of "otherwise dealing with" as something separate and distinguishable from the process of investigation though it has been found convenient to give separate labels wherever necessary to the different facets of police activity. The police duties number both in range and variety. It would lead to both confusion and inconvenience if the duties of investigation are assigned to one set of police agency while special police officer is left to deal with the special function under the Act. The entire hierarchy of police officers who are to assist the special police officer would be purposeless if they are to deal only with the rescue and search operations envisaged under the Act. A wider meaning of the term "dealing with" would be in harmony with legislative intendment and purpose.

In re Kuppammal (1) followed—

Petition under section 439 Criminal Procedure Code, for revision of the order of Shri H. D. Sharma, Magistrate 1st Class, Delhi, dated 30 November, 1959, quashing the Charge Sheet.

R. D. DHEBAR AND MR. BISHAMBAR DAYAL, ADVOCATES,
for the Petitioner.

TARA CHAND MATHUR, ADVOCATE, for the Respondents.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—The twenty criminal revisions in which I am now giving judgment have raised the question of the competence of a police officer, other than a special police officer, to investigate offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter called the Act).

(1) A.I.R. 1959 Madras 389.

In all these cases, the investigation which appears to have been conducted by an officer, other than a special police officer as defined under the Act, has been held by the trial Magistrate to be contrary to law and a direction has been made that the offences which are the subject-matter of these revisions should be re-investigated by the appropriate authority and a proper charge-sheet framed thereafter.

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In pursuance of the International Convention signed at New York on 9th of May, 1950, for the suppression of immoral traffic in women and girls, the Suppression of Immoral Traffic in Women and Girls Act was enacted on 13th of December, 1956. Clause (i) of section 2 defines a "special police officer" to mean "a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act". All the accused persons in these cases were charged under section 8 of the Act which makes it an offence for any one to seduce or solicit any person for the purposes of prostitution and makes it punishable with imprisonment for a term which may extend to six months or with fine up to Rs. 500. The investigation of these cases apparently was in the hands of a person, who was not a special police officer under the Act and it was contended before the trial Magistrate that for this reason the entire proceedings ought to be quashed. This plea found favour with the trial Magistrate against whose order the State has come up in revision.

According to Mr. Dhebar, a special police officer is just an additional authority created for some of the specified purposes of the Act. In all

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other respects, especially in regard to investigation, the normal agency of investigation is preserved and remains unaffected. The relevant provisions of the Act have been examined with meticulous care by the learned counsel in support of his contention. Under sub-section (1) of section 13, it is provided that the special police officer is to be "appointed by or on behalf of that Government for dealing with offences under this Act in that area". Under sub-section (2), the qualifications of a special police officer are prescribed. In the case of Delhi, he must be of the rank of the Deputy Superintendent of Police. Sub-section (3) requires that a special police officer for the efficient discharge of his functions under this Act shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit and it is further provided that the State Government may associate with this 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.

Section 14 makes an offence under the Act to be cognizable within the meaning of the Criminal Procedure Code. But an arrest without warrant is to be made only by the special police officer or under his direction or guidance, or subject to his prior approval. Again, a search without warrant can be conducted only under the authority of the special police officer under section 15 of the Act. Section 16 empowers a special police officer to rescue a girl from a brothel on fulfilment of certain conditions.

It has been very strenuously urged by Mr. Dhebar that the ambit of the duties of a special police officer are restricted inasmuch as he is only required to "deal with" the offences under the Act. In dealing with the offences, a police officer performs only a portion of the duties which are normally assigned to him under the Criminal Procedure Code. Under sub-section (1) of section 5 of the Criminal Procedure Code, "all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained". It is submitted that the powers of investigation are impliedly excluded from the scope of the functions assigned to a special police officer under the Act. As the Act is designed to suppress immoral traffic in women and girls, a task which is at once difficult and delicate, it has been thought fit by the legislature in its wisdom to create the authority of a special police officer, who is to be assisted by a non-official body to deal with certain situations contemplated under sections 14, 15 and 16 of the Act. For the efficient discharge of his functions under these sections, he is to be assisted by a hierarchy of police officers as also by the advice of a non-official body consisting of leading social workers. It would be contrary to the intentions of the legislature if the special police officer, in addition to the special functions assigned to him under the Act is required also to act as the normal agency for investigation. It is argued that the station house officer of a police station remains and is intended to remain the principal investigating agency within his area. If his authority was to be abrogated, it could have been done only by saying so specifically. The powers of an ordinary police officer cannot be said to have been taken away even by implication.

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By way of elucidation, Mr. Dhebar has urged that wherever necessary the legislature has made a distinction between the investigative and other functions of the police. By way of illustration, it has been pointed out that section 5A of the Prevention of Corruption Act, 1947, requires that no officer below the rank of a Deputy Superintendent of Police in the case of Delhi "shall *investigate* any offence . . .". Again, sub-section (2) of section 202 of the Criminal Procedure Code speaks of enquiry or investigation by a person other than a Magistrate in contradistinction to being "tried" or "otherwise dealing with". According to Mr. Dhebar, the duties which fall within the phrase "deal with" can be well illustrated by various sections of the Criminal Procedure Code. Section 47 authorises search of a place entered by persons sought to be arrested; section 48 provides for a procedure where ingress is not obtainable; section 49 empowers a police officer to break open windows for purposes of liberation; section 51 provides for search of arrested persons; section 53 gives power to seize offensive weapons; section 54 authorises a police officer to arrest without an order from a Magistrate section 96 lays down the procedure for issuing of a search-warrant; and section 98 provides for a search of a house suspected to contain stolen property, forged documents, etc.

The line of reasoning presented by Mr. Dhebar is not unattractive, but on analysis I find that it breaks down at more than one point. The narrow meaning of the phrase "deal with" would bring about a conflict with the provisions of the definition clause in which a "special police officer" is to be in charge of police duties within a specified area. It cannot be denied that "investigation" is a part of police duties and the officer cannot be deprived of this important function when he has

been invested especially with the task of performing all police duties.

It is true that the Code of Criminal Procedure does appear to classify the various police functions in sub-section (1) of section 5, but it cannot be overlooked that no attempt has been made to define or specify them in the Code. It is not possible to spell out the police functions under the heading of "otherwise dealing with" as something separate and distinguishable from the process of investigation though it has been found convenient to give separate labels wherever necessary to the different facets of police activity. The foundation of Mr. Dhebar's contention is a deductive process of reasoning which does not provide an adequate basis for its support.

It is conceded by Mr. Dhebar that the only reported judgment on the question in controversy does not support the result contended for by him. In *In re Kuppammal's case* (1), Mr. Justice Somasundaram was presented with a similar argument which has been addressed before me by Mr. Dhebar, and it was held that the phrase 'dealing with offences' is wider than 'investigation' and an investigation therefore is included in the expression 'dealing with offences', and the offence must, therefore, be investigated only by one of the officers mentioned in the section and in this case it must be investigated by the special officer, namely, the Deputy Superintendent of Police, authorised for that area to investigate". Exception has been taken by Mr. Dhebar to the observation of Mr. Justice Somasundaram, who stated at page 390 thus:—

"But when the section says that a particular police officer alone shall deal with offences under this Act, it seems to me

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that it means that such particular officer alone shall investigate into the offence.”

Mr. Dhebar has pointed out that the word “alone” is not used in the Act anywhere. That may be so, but it appears to be reasonable inference because it is stated in the Act that the special police officer is to deal with the offences under this Act. In my opinion, the key to the whole construction is provided by the definition of a special police officer in clause (i) of section 2 of the Act. A special police officer appointed by the State Government is to be “in charge of police duties” within a specified area for the purposes of this Act. The gamut of police activities cannot be restricted to the duties assigned to a special police officer under sections 14, 15 and 16 of the Act. The police duties number both in range and variety and the restricted meaning which Mr. Dhebar has invited me to give to the duties and functions of a special police officer under the Act does not appear to be warranted by the words used in the statute. It would, in my opinion, lead to both confusion and inconvenience if the duties of investigation are assigned to one set of police agency while the special police officer is left to deal only with the special functions under the Act. The entire hierarchy of police officers who are to assist the special police officer would be purposeless if they are to deal only with the rescue and search operations envisaged in the Act. A wider meaning of the term “dealing with” would, in my judgment, be in harmony with legislative intent and purpose. The Act does not just create ‘an’ authority in the person of a special police officer as contended for by Mr. Dhebar, but such an officer is ‘the’ authority for purposes of the Act.

I have been informed at the Bar that the procedure under the Act which was passed in December, 1956, has hitherto been that the special police officer sends up the "challan" for prosecution. An irregular practice, whatever its duration, would not be consecrated into a principle of law and I am not inclined to attach importance in the setting of this case to the administrative practice even though it seems to be in conformity with the result at which I have independently arrived on an examination of the provisions of the Act.

In my judgment, the view taken by the Court below is correct and I am in respectful agreement with the authority of Somasundaram, J., in *In re Kuppammal* (1).

I would accordingly dismiss these petitions for revision.

K.S.K.

LETTERS PATENT APPEAL.

Before G. D. Khosla, C.J., and Shamsheer Bahadur, J.

WAZIR CHAND AND OTHERS,—Appellants.

versus

PIRAN DITTA AND OTHERS,—Respondents.

L. P. A. No. 56-D of 1959

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 3 and 30—Application for compensation by successors of a claimant—Whether to be treated as a single unit—Writ of certiorari—Erroneous interpretation of Rule 30—Whether an error apparent on record—Order based on such erroneous interpretation—Whether can be quashed.

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(1) A.I.R. 1959 Mad. 389.