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(S. S. Sandhawalia, C.J.)

the provisions of section 109 of the Code of Criminal Procedure, unless, additionally, there was material on which the Executive Magistrate could acquire reason to believe that the petitioners were doing so with a view to committing a cognizable offence. Learned counsel further contends that in the instant case, the explanation of the petitioners that they had come to the spot at that odd hour in order to have a good time was accepted by the police and projected forth in the report before the Magistrate as the purpose for concealment of their presence. He says that to have a good time is no offence, much less a cognizable one. And on that score, the second ingredient of section 109 of the Code of Criminal Procedure being missing, it is pleaded that the proceedings before the learned Magistrate were without jurisdiction. To meet the argument, Mr. Jai Vir Yadav, learned counsel for the State, has stated that the lady was a married woman (though this fact is disputed by the learned counsel) and as such the offence of adultery was in view to be committed. But that offence would not be cognizable for a complaint needs to be filed by the husband aggrieved of the offence. Besides the said offence, learned counsel for the State has not been able to suggest any other offence which was in view to be committed and for which purpose the petitioners are to have taken the precautions to conceal their presence. In this view of matter, it is to be held that the requirements of section 109 of the Code of Criminal Procedure are not satisfied on the bare reading of the report. And if that is so, this Court would be well within its right to interfere at the initial stages to prevent the abuse of the process of the Court as also in the interest of justice under Section 482 of the Code of Criminal Procedure.

4. For the foregoing reasons, this petition is allowed and the proceedings against the petitioners are hereby quashed.

N. K. S.

Before S. S. Sandhawalia, C.J. & G. C. Mital, J.

CHANDIGARH ADMINISTRATION and others,—Appellants.

versus

SURJIT KESAR,—Respondent

Letters Patent Appeal No. 978 of 1982.

October 6, 1982.

Punjab Cinemas (Regulation) Act (XI of 1952)—Section 5—Punjab Cinema (Regulation) Rules, 1952—Rules 2(ix), 3 and 72—Temporary

licence for a 'touring cinematograph'—Nature of—Whether transient and migratory—Length of operation of such a licence—Whether a relevant consideration for refusing to extend the licence—Recording of reasons for not extending the licence—Whether necessary.

Held, that it would be manifest from Rule 3(iii) of the Punjab Cinema (Regulations) Rules, 1952 as originally framed, that it visualises a temporary licence as essentially transient. In the first instance it could not be granted for a period of more than two months. A curb was then placed on its extension, namely, to be not beyond six months. The framers, indeed, had been at pains to ensure that no touring cinematograph should function at any one place in excess of six months in a calendar year. With that limitation it would be plain that a temporary licence was virtually prohibited from becoming a continuous one at the same place. The subsequent amendments in Rule 3(iii) have only enlarged the period of grant and extension without shifting from the basic spirit of this provision. Even now the rule provides for the grant of a temporary licence initially for an aggregate period of not more than six months in one calendar year. The use of the words 'calendar year' is meaningful when viewed against the history of the rules. That the extension of such a temporary licence is an exception seems to be manifest from the provision specifying that the licensing authority must record sufficient reasons for doing so. Even after recording such reasons, the further bar is placed that this cannot then extend beyond a period of six months in the aggregate. To further limit this discretion it is provided that in calculating the aggregate period it is not only the grant of the particular licensee which is to be taken into consideration but also the grant to any other touring cinematograph within 5 miles of the outer limits of such a town or village. It thus seems plain that the limited period of time for the original grant of the temporary licence, the absence of any provision for its renewability *stricto sensu*, the strict curbs on its further extension the necessity of recording of reasons to do so and the method of calculating the aggregate period are all sharp pointers to the patent intent of the statute that such a licence is essentially transient and temporary in its nature. A further constrictio is provided with regard to the grant of these temporary licences in places where a permanent cinema exists. It, thus, inexorably follows that a licence for a touring cinematograph is essentially migratory and temporary in nature and its grant for an aggregate period not exceeding six months in one calendar year is the mandatory rule whilst its extension is only by way of exception. It is, therefore, held that a temporary licence for a touring cinematograph granted under section 5 of the Act and the rules framed thereunder is essentially transient and migratory in nature.

(Paras 11, 14 and 15).

Held, that the length of the operation of a temporary licence is not only relevant but a material factor for consideration for the

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grant of any extension thereto. Once that is so, in a particular case this may well be the sole consideration for a refusal to extend the same. Indeed, rule 3(iii) and (iv) in terms stringently specify the lengths of time for the original grant of temporary licence as also the period for its extension and further are couched in prohibitory terms. If the rules envisage these licences to be essentially temporary and transient in nature, then the fact that the grantees had continuously enjoyed the extension of these licences for a period of more than five years or two years at the same place is a material if not conclusive consideration for denying further extension.

(Para 16).

Held, that in view of the peculiar context and the language of rule 3(iii), the licensing authority is not obliged to specifically record reasons for not extending a temporary licence. The relevant provisions provide for a temporary licence not exceeding an aggregate period of six months in one calendar year. Beyond the period of the grant, such a temporary licence simply lapses and by contrast to rule 3(ii) it is not renewable. The proviso to rule 3(iii) further indicates the intention of the framers that reasons have to be recorded in writing only if the original period of the temporary licence is to be extended. This is by way of an exception to the normal period of the grant. It follows, therefore, that in a mere refusal to extend, there is no mandate to record reasons and indeed it is only in the converse that it is so provided.

(Para 18).

Appeal under Clause X of the Letters Patent against the judgment, dated 26th April, 1982 passed by Hon'ble Mr. Justice M. M. Punchhi in C.W.P. No. 1692 of 1982.

M. R. Agnihotri, Advocate with O. P. Goyal, Advocate, for the appellants.

Anand Swarup, Sr. Advocate with Sunil Parti, Advocate, for the respondents.

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether a temporary licence for a "touring cinematograph" granted under section 5 of the Punjab Cinemas (Regulation) Act, 1952 and the rules framed thereunder, is essentially transient and migratory in nature — comes to be the spinal issue in these two connected appeals under clause X of the Letters Patent preferred by the Chandigarh Administration.

2. The issues of fact and law being admittedly common, the factual matrix may be picked from L.P.A. No. 978 of 1982, *Chandigarh Administration and others v Surjit Kesar*.

3. Mani Majra is a populous village lying on the outskirts of the town area of the Chandigarh city, but within the Union Territory. The respondent writ petitioner Surjit Kesar secured a temporary licence (for six months in the first instance) for a touring cinematograph under rule 3 of the Punjab Cinema (Regulation) Rules, 1952 (hereinafter called 'the Rules') in January, 1977. The respondent-writ petitioner's averments that the licence was given in pursuance of a policy decision and that an understanding was given to him by the District Magistrate, Chandigarh, have been categorically denied by the Chandigarh Administration as also the alleged claim that he had invested Rs. 3,00,000 in the venture. In pursuance of the temporary licence, the writ petitioner set up a temporary structure for exhibiting films known as the Raj Talkies. The said licence was extended from time to time till the 31st of December, 1981. Thereafter an extension was granted only for a period of three months expiring on the 31st of March, 1982 or upto the date when a permanent cinema hall, namely, Dhillon Theatre started functioning at Mani Majra. However, an application for further extension of the said temporary licence was declined by the District Magistrate who is the licencing authority, by his order, dated 26th of March, 1982. An appeal against the same was carried to the Home Secretary, Chandigarh Administration. The said appeal was dismissed on the 8th of April, 1982 but it was directed that the orders of the District Magistrate refusing the licence would operate only with effect from the 14th of April, 1982.

4. Similarly, Inderjit Walia, the respondent in L.P.A. No. 979 of 1982, had set up a touring cinematograph under a temporary licence granted to him on the 18th of February, 1980, within the revenue estate of village Palsora known as "Pooja Talkies". This was also extended from time to time till the 31st of December, 1981, whereafter the last extension was only for a period of three months. Further extension was declined by the District Magistrate on the 26th of March, 1982 and an appeal against the same was rejected by the Home Secretary in identical terms as in the case of Raj Talkies.

5. The respondent-writ petitioners then approached this Court under Article 226 of the Constitution and after admission the petitions were directed to be promptly listed under the orders of the Motion Bench for hearing in view of the fact that interim relief had

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been declined. The learned Single Judge has by a common judgment allowed both the writ petitions primarily on the ground that the length of operation of a temporary licence was an altogether irrelevant consideration and the appellate orders of the Home Secretary suffer from the said vice. It has been further directed that the applications for the renewal of these licences be disposed of afresh by the District Magistrate and meanwhile he was directed to grant a temporary permit forthwith, operative retrospectively, without the payment of any fee.

6. As indicated at the outset the cardinal question herein is the intrinsic nature of a temporary licence for a touring cinematograph and the ancillary question whether the reasons projected by the Home Secretary for declining extension of the licences are valid and germane to the issue. The clue to this question obviously lies in the detailed provisions of the Punjab Cinemas (Regulation) Rules, 1952 which govern the grant, refusal and cancellation etc. of the temporary licences for a touring cinematograph. However, before adverting in some depth to these provisions it seems apt to view the matter in the larger perspective of its legislative history. For our purposes it is unnecessary to delve beyond the Cinematograph Act, 1918 which was a Central Statute governing the subject. This was replaced subsequently by the Cinematograph Act of 1952. The various State legislatures at this stage (including the State of Punjab) also passed separate Acts conforming to Part III of the Central Act pertaining to the regulation of exhibitions by means of cinematograph which was a subject covered by the exclusive legislative field of a State. The Punjab Act was brought into force by a deeming provision with effect from the 28th of July, 1952 and in exercise of the powers conferred by section 9 of the said Act the rules were framed and enforced with effect from the 1st of November, 1952. These rules, as subsequently amended, came to be applicable in the Union Territory of Chandigarh on its creation with effect from the 1st of November, 1966 with subsequent adaptations thereof, and later amendments have been made therein.

7. Against the aforesaid legislative backdrop what perhaps catches the eye prominently is the fact that relevant sections 3, 4 and 5 of the Act and indeed the whole statute did not in terms provide for any categorisation of different kind of licences or the duration thereof. This was, however, provided by the promulgation of the Punjab Cinemas (Regulation) Rules, 1952 (hereinafter called the

Rules) which made detailed provisions with regard thereto which have been subsequently amended from time to time. As already noticed, it is to be these detailed provisions in the Rules that one must turn for eliciting the real nature of the grant of a temporary licence for a touring cinematograph.

8. Reference must inevitably be made first to the very definition of a 'touring cinematograph' in rule 2(ix) which in itself seems to be of considerable significance:—

"2(ix) 'touring cinematograph' means a cinematograph apparatus which is so adopted and constructed so that it can be taken from place to place for the purpose of giving cinematograph exhibitions."

The very language aforesaid is indicative of the nature and purpose thereof and the word 'touring' itself is significant. This hardly needs any elaboration but the framers of the rules have left the matter in no doubt by specifying that the apparatus visualised is one that can be taken from place to place and the migratory nature of a touring cinematograph is, therefore, writ large in its very name as also in its definition.

9. Again admittedly the licence for a touring cinematograph is expressly designated as a temporary one. The provisions governing the grant of the same are *inter alia* contained separately in Part IV of the Rules. The very heading of Part IV is significant and calls for notice *in extenso* :—

Part IV : "Special Rules for Exhibitions by means of Touring Cinematographs *in places licenced temporarily.*"

It would thus be plain that the Rules 72 to 84-A contained in this part are by express intendment for places which have been licenced only temporarily for exhibitions by means of a touring cinematograph. To leave the matter in no doubt, rule 72 again provides as under :—

"72. The rules in this part shall apply to exhibitions given by means of touring cinematographs *in places licenced temporarily.*"

It would be prolix to quote the other rules in this part but pointed reference to rules 76 and 83 is called for. This would make it manifest that in consonance with the temporary and transient nature of

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such licensing, the exhibitions are visualised in tents, booths or any other impromptu shelter or structure. Larger conspectus of these provisions would leave no manner of doubt that 'touring cinematographs' are visualised as transient and migratory in nature and exhibitions therefor are to be made in tents, booths or other shelters which are normally temporary and moveable structures.

10. In the aforesaid background one must now advert to rule 3 which appears to be crucial in this context and would bear reproduction *in extenso* :—

PART II : "3(i) Licences granted under section 5 of the Act shall be either for a period of three years or temporary.

(ii) A three years licence shall only be granted subject to the provisions of section 5 of the Act and in accordance with the provisions of the rules in Part III in respect of a building permanently equipped for cinematograph exhibitions. It shall be valid for three years from the date of issue and shall be renewable on the application of the licensee:

Provided that in the case of a three years' licence the place licensed under the Act shall be inspected annually by the Executive Engineer as well as by the Electrical Inspector to Government, Punjab, on the payment of the fees as prescribed in the Schedule to rule 16.

(iii) Subject to the provisions of sub-rule (iv) and the rules in Part IV, a temporary licence may be granted in any town or village for exhibition by means of a touring cinematograph for an aggregate period not exceeding six months in one calendar year :

Provided that the Licensing authority may extend the aggregate period of six months by such further period not exceeding six months in the same calendar year for sufficient reasons to be recorded in writing, as it may think fit :

Provided that in calculating the aggregate period in respect of any town or village the period for which a licence to

the same or other touring cinematograph has been granted within five miles of the outer limits of such town or village shall be taken into account.

- (iv) No licence to a touring cinematograph shall be granted for a place where there is a permanent cinema :

Provided that such a licence may be granted for such a place for a period not exceeding in the aggregate three months on special occasions such as fairs and religious gatherings or to meet a particular temporary need."

Herein what first deserves pointed notice is the sharp distinction betwixt the renewability of a three years licence on the one hand and a temporary licence on the other. By virtue of sub-rule (ii) a three years licence is patently renewable and not only that it seems to be (without conclusively pronouncing thereupon) mandatorily so on the application of the licensee provided, of course, the conditions for its grant remain satisfied. The language of this sub-rule is emphatic and declares that such a licence shall be renewable on the application of the licensee. Significantly sub-rule (iii) pertaining to a temporary licence does not even mention its renewability at all and merely provides for its extension on stringent terms. The deliberate difference of language employed, namely, renewability in the context of a three years licence and a mere extension with regard to a temporary licence cannot be lost sight of. It would thus be manifest that the rules do not visualise a continuous renewability of a temporary licence so as to virtually render it as quasi-permanent.

(11) To appreciate the true import of rule 3(iii) it seems necessary to notice its provisions as originally enacted in 1952:—

"3(iii) Subject to the provisions of the rules in Part IV, a temporary licence may be granted in respect of any place, for exhibitions, by means of a touring cinematograph only. A temporary licence may be given in the first instance for a period of 2 months. This period may, however, be extended upto a maximum period of six months and licence may be granted to one or more than one applicant, to say that the aggregate period during which any touring cinematograph or cinematograph functions at any one place shall not exceed six months in a

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calendar year. A fee of Rs. 10 may also be levied for the second or a subsequent licence."

It would be manifest from the above that originally the framers of the rules visualised a temporary licence as essentially transient. In the first instance it could not be granted for a period of more than two months. A curb was then placed on its extension, namely, to be not beyond six months. The framers indeed had been at pains to ensure that no touring cinematograph should function at any one place in excess of six months in a calendar year. With that limitation it would be plain that a temporary licence was virtually prohibited from becoming a continuous one at the same place. The subsequent amendments in rule 3(iii) have only enlarged the period of grant and extension without shifting from the basic spirit of this provision. Even now the rule provides for the grant of a temporary licence initially for an aggregate period of not more than six months in one calendar year. The use of the words 'calendar year' is meaningful when viewed as above against the history of the rules. That the extension of such a temporary licence is an exception seems to be manifest from the provision specifying that the licensing authority must record sufficient reasons for doing so. Even after recording such reasons, the further bar is placed that this cannot then extend beyond a period of six months in the aggregate. To further limit this discretion it is provided that in calculating the aggregate period it is not only the grant of the particular licensee which is to be taken into consideration but also the grant to any other touring cinematograph within 5 miles of the outer limit of such a town or village. It thus seems plain that the limited period of time for the original grant of the temporary licence, the absence of any provision for its renewability *stricto sensu*, the strict curbs on its further extension, the necessity of recording of reasons to do so and the method of calculating the aggregate period are all sharp pointers to the patent intent of the statute that such a licence is essentially transient and temporary in its nature.

(12) The aforesaid stand is further buttressed when reference is made to clause (iv) of rule 3. Herein again it deserves recalling that when originally enacted there was virtually a bar to the licensing of a touring cinematograph in places where there was a permanent cinema. In the wake of the judgment in *M/s. Rasdeep Touring Talkies v. The District Magistrate, Karnal*, (1), the provision

was re-cast with the proviso added thereto. A plain reading of the existing provision would show that indeed this bar was not only continued but made more absolute. It seems to follow, a *fortiori* that if no licence is to be granted for a place where there is a permanent cinema then such a temporary licence would not be extended as well where a permanent cinema comes into existence. It would be elaborated hereafter that in the context of these temporary licences the extension thereof is clearly in the nature of a fresh grant and not merely an automatic continuation of the previous licence. The proviso herein is significant because it strictly limits the grant or the extension to a period of only three months in the aggregate and specifies the ground on which it can be done. This is particularly meaningful in so far it is to be only for special occasions such as fairs and religious gatherings or to meet a particular temporary need. It thus follows that clause (iv) further super-imposes a condition of transitoriness on a temporary licence where there is a permanent cinema. This indeed highlights the fact that temporary licences are in no way to be a substitute for permanent cinemas and indeed but for exceptional reasons they are not visualised to co-exist.

(13) Now a conspectus of the relevant provisions of the Act and the afore-mentioned rules seems to bring into sharp focus the larger purpose of the statute in this context. In *M/s. Rasdeep Touring Talkies' case* (supra) it was rightly noticed as under :—

* * *. Firstly, and mainly the object is to safeguard the interests of health and public safety. Historical notice can be taken of the fact that vast fires had broken out in many parts of the world due to loose handling of cinematograph films.”

To effectuate this purpose of health and public safety the statute closely provides for the regulation and licensing of exhibitions in cinema halls. The licences provided for by the statute are distinctly of two kinds, namely, one for a period of three years and the other a temporary. The former are governed by the detailed provisions provided in Part III of the Rules. A bird's eye view of rules 17 to 71 therein would leave no manner of doubt regarding the meticulous detail with which permanent cinema halls are governed in order to ensure both the interest of public health as also of public safety. It is plain that where a regular cinema hall is provided it must satisfy the stringent tests laid out therein. As has already been

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noticed, a three years licence is renewable and the legislature has exhibited its intention that on an application of the licensee it shall be so done. It seems to follow that wherever there is a permanent need, the intent of the statute is to provide a permanent cinema hall.

(14) In sharp-contrast to the above is a temporary licence for a touring cinematograph. These are governed by the relatively slender provisions in part IV. While an attempt is made to guard against the hazards of fire etc. in places licensed temporarily it is plain that these impromptu cinema halls cannot match the requirements of public safety and the interest of public health so well provided for in permanent halls. The fact that these temporary licences are primarily meant to provide for a particular temporary need, like fairs, religious gatherings etc., is writ large into the provisions of the rules. It is for this reason that even in the first instance the temporary licence is not to exceed six months in the aggregate in one calendar year. It is not renewable in the strict sense but can be merely extended and the period of such extension is further limited by rules. This again can only be done, if sufficient reasons exist, for extension and are mandatorily required to be recorded in writing. A further construction is provided with regard to the grant of these temporary licences in places where a permanent cinema exists. It thus inexorably follows that a licence for a touring cinematograph is essentially migratory and temporary in nature and its grant for an aggregate period not exceeding six months in one calendar year is the mandatory rule whilst its extension is only by way of exception.

(15) To conclude on this aspect the answer to the question posed at the outset is rendered in the affirmative to the effect that a temporary licence for a touring cinematograph granted under section 5 of the Punjab Cinemas (Regulation) Act 1952 and the rules framed thereunder is essentially transient and migratory in nature.

(16) Now on the aforesaid finding it inevitably follows that the length of the operation of a temporary licence is not only relevant but a material factor for consideration for the grant of any extension thereto. Once that is so, in a particular case this may well be the sole consideration for a refusal to extend the same. Indeed rule 3(iii) and (iv) in terms stringently specify the lengths of time for the original grant of temporary licence as also the period

for its extension and further are couched in prohibitory terms. On this basic premise, it is patent that the reasons clearly and categorically given by the Home Secretary for affirming the refusal of extension by the Licensing Authority are both germane to the issue and are patently valid. It was found as a fact that the temporary licence for the Raj Talkies had already continued to be extended from time to time for a period of more than five years and the last extension had expressly been only for a period of three months. Similarly, Pooja Talkies had continued to operate for more than two years and the last extension was again limited to three months only. In consonance with the view expressed by us, the Home Secretary had also opined that the touring talkie is not to be a permanent proposition at the same place. As has been already held, if the rules envisage these licences to be essentially temporary and transient in nature, then the fact that the respondents had continuously enjoyed the extension of these licences for a period of more than five years or two years at the same place is a material if not conclusive consideration for denying further extension.

(17) Again the appellate order of the Home Secretary took into consideration the fact that a permanent cinema styled as Dhillon Theatre was complete and likely to start functioning soon at Mani Majra. Similarly, it took notice of the fact that a modern and permanent cinema, namely, Batra Theatre had come up recently and was functioning quite near to the Pooja Talkies and another permanent cinema, namely, Picadily, which was also not far off. These considerations are again germane to rule 3(iv). It in terms highlights the relevance of a permanent cinema where a temporary permit for a touring cinematograph had been granted and goes to the length of providing that such a licence is not to be granted where a permanent cinema exists except for meeting a particular temporary need and that also for a period not exceeding three months. It would thus be plain that the existence or the coming up of a permanent cinema is not only a relevant but a material consideration both for the grant or the refusal of extension of a temporary licence. Lastly, the Home Secretary took the view that the petitioners did not have any inherent or vested right for the extension of their temporary licences. Herein again, he seems to be right. This result seems to follow from the fact that whereas a three years' licence is renewable under rule 3(iii), a temporary licence, on the other hand is first limited to six months for its original grant without any provision for its renewal. Indeed the spirit of the provision seems to be that extension is to be granted by way of an exception and for sufficient

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reasons to be recorded in writing. It would appear that the renewal of a three-years' licence is a thing apart from the mere limited extendability of a temporary licence.

(18) Before parting with this judgment it is necessary to notice that the learned Single Judge had in terms upheld the constitutionality of rule 3(iv) and no challenge to that finding was raised on behalf of the respondents. Equally it deserves notice that in the writ petitions, the primary, if not the sole attack was directed against the appellate order of the Home Secretary which gave detailed reasons for affirming the non-extension of the temporary licences which have been held to be both germane to the issue and otherwise valid. This apart, I am inclined to the view that in view of the peculiar context and the language of rule 3(iii) the licensing authority is not obliged to specifically record reasons for not extending a temporary licence. As already noticed the relevant provisions provide for a temporary licence not exceeding an aggregate period of six months in one calendar year. Beyond the period of the grant, such a temporary licence simply lapses and by contrast to rule 3(iii) it is not renewable. The proviso to rule 3(iii) further indicates the intention of the framers that reasons have to be recorded in writing only if the original period of the temporary licence is to be extended. As said earlier this is by way of an exception to the normal period of the grant. It follows, therefore, that in a mere refusal to extend, there is no mandate to record reasons and indeed it is only in the converse that it is so provided. Consequently the orders of the District Magistrate declining to extend suffer from no infirmity on this score.

(19) As a necessary consequence of the aforesaid findings, I would allow both the appeals and am constrained to set aside the judgment of the learned Single Judge and dismiss the two writ petitions. It, however, appears that the appellants were somewhat remiss in not projecting the matter in a correct perspective and highlighting the detailed provisions of the rules before the learned Single Judge and therefore, I decline to burden the respondents with costs.

G. C. Mital, J.—I agree.

N.K.S.