

Mr. S. C.
Kapoor
v.
Pt. Amar
Nath.

Kapur, J.

After sub-letting the estate of a tenant can be divided into two parts, namely the right of reversion and sub-tenancy. When a sub-tenancy comes to an end, there is merger of two estates as a result of which the sub-tenancy terminates. Therefore when the tenant sub-lets the premises again to another person or to one of the sub-tenants of any other portion, it cannot be said that this is no creation of a new sub-tenancy, and as it was without the consent of the landlord in the present case, the operation of section 9 (1) (c) becomes effectual and the tenant becomes liable to ejection. I would therefore dismiss the appeal, but considering the circumstances of the case leave the parties to bear their own costs throughout.

The Revision Petition was brought only to obviate any objection on the part of the respondent as to the competency of the appeal. Since the appeal has been dismissed, the Revision Petition also stands dismissed and the rule discharged, but there will be no order as to costs.

CRIMINAL WRIT.

Before Falshaw, J.

RATNA *alias* RAKHNA,—*Petitioner.*

versus

THE STATE OF DELHI AND ANOTHER,—*Respondents.*

Criminal Writ No. 142-D of 1955.

1955

Nov. 18th.

Bengal Suppression of Immoral Traffic Act (VI of 1933)—Sections 4, 8, 14 and 16—Proceedings under sections 4 and 8—Premises held not to be a brothel—Finding unchallenged—Magistrate dealing with case of a girl under section 14 cannot come to a different finding on the same evidence.

Held that, where in proceedings under sections 4 and 8 of the Bengal Suppression of Immoral Traffic Act a finding is given that the premises from which the girl was removed were not proved to be a brothel and that finding has been allowed to stand unchallenged, it cannot be within the power of a Magistrate dealing thereafter with the case of a girl under section 14 to accept as conclusive evidence which has been held not to be so.

Petition under Article 226 of the Constitution of India, praying that this Hon'ble Court may be pleased to issue a Writ in the nature of Habeas Corpus or an order of a like nature directing the Respondents to restore the said Putli, daughter of the petitioner, to her freedom and to the petitioner.

NUR-UD-DIN AHMED, for Petitioner.

NANAK CHAND, for Respondents.

JUDGMENT

FALSHAW, J. This is a *habeas corpus* petition under Article 226 of the Constitution filed by a man named Ratna or Rakhna claiming an order of release for his daughter Putli, who is at present being detained in the so-called Rescue Home under orders of a Delhi Magistrate. Falshaw, J.

Briefly the facts of the case are that, on the 20th of July 1953 several premises in Delhi were raided by the Police under the provisions of the Bengal Suppression of Immoral Traffic Act as extended to Delhi on the allegation that they were brothels, and a large number of girls alleged to be under 18 years of age were removed from these premises. The girls so removed were kept in some interim place of detention under section 17 of the Act. A woman named Gun Devi who is alleged to be the sister of the present petitioner was prosecuted and brought to trial under sections 4 and 8 of the Act in the Court of the Magistrate at Delhi in respect of the premises from which the girl Putli was removed and by his order dated the 30th of April, 1954 this woman was convicted and sentenced to one and a half years' imprisonment.

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Her appeal, however, decided by an Additional Sessions Judge proved successful and she was acquitted on the 4th of September 1954 on the finding that it was not proved that the premises in question were being used as a brothel or that any one was living on the earnings of prostitution in those premises.

According to the petitioner, after that case had ended in this way it was incumbent on the authorities to produce the girl who was being held in detention under section 17 of the Act before a Magistrate for an order regarding her to be passed under section 14 of the Act, and it was alleged that no enquiry had been held or order passed under section 14 and that the continued detention of the girl was therefore illegal.

It appears, however, that the girl had in fact been produced before a first class Magistrate who on the 21st of May 1955 had passed an order for the detention of the girl Putli in the Rescue Home until she had attained the age of 18. The order reads as follows—

“I have considered the case of Putli daughter of Rakhna removed from brothel of G.B. Road on 20th July 1953 and kept in the Poor House under my orders. Shortly after the recovery she was examined medically and found to be 11 years of age. She was found to be not virgin. She was recovered from a brothel. I accept her age to be 11 years on the 1st of August 1953. Her sending back to live in the same brothel will not be in her interest. She is being well kept and well looked after in the Rescue Home and I therefore under section 14 of the Bengal Suppression of Immoral Traffic Act order that Putli be kept in the Rescue Home till she attains the age of 18 years.”

It does not appear from this order that any evidence was considered other than the fact brought out in the course of the case against the woman Gun Devi in which it was proved, as is mentioned in the order of the Magistrate, that the girl Putli was about 11 years old at the time of her recovery and that she was not a virgin, and there is no doubt that these matters were considered, and in fact discussed at some length, in the judgment of the learned Additional Sessions Judge in which the conclusion was reached that no criminal offence had been established against Gun Devi and that it was not proved that the flat occupied by her was being used as a brothel.

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Section 16 of the Act deals with what is to be considered by a Magistrate in passing an order under section 14. It reads—

“(1) When any girl is brought before a Magistrate under section 14, and any person has been tried by any Court on a charge under section 8, 9, 10, 11 or 12 in respect of such girl or under section 4 in respect of the premises from which she has been removed, the record of such trial may be called for by the Magistrate and the record of evidence given in such trial may be used for the purposes of the inquiry under section 14, as if recorded by such Magistrate.

(2) Nothing in this section shall prevent any Magistrate, if he so thinks fit, from hearing and recording the evidence of any witness.”

From this it would appear that in deciding what order should be passed under section 14 a Magistrate can either simply take into consideration the record of the criminal proceedings or can call for additional evidence. There is nothing to show in the present

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case that any additional evidence was called for and therefore the Magistrate must have decided the matter on the criminal record. Such being the case, it appears to me that the Magistrate is necessarily bound by the findings in the criminal case. Thus if even the Magistrate who conducted the trial had come to the conclusion that the premises were not proved to be used as a brothel and that no offence was established against the woman prosecuted, another Magistrate of equal power passing an order under section 14 would not be entitled to disregard these findings and decide the matter as if it had been held that the premises were proved to be a brothel, and it seems to me to be even more out of place for him to disregard the findings of a Sessions Judge on these points. I, therefore, consider that if the authorities interested in the fate of this girl and other girls similarly placed were dissatisfied with the findings in the criminal case of either the trial Court or the appellate Court, as the case may be, their proper course was to take the necessary steps to get those findings set aside by an appeal filed by the State against the order of acquittal. In my opinion, once a finding has been given that the premises from which the girl was removed were not proved to be a brothel and that finding has been allowed to stand unchallenged, it cannot be within the power of a Magistrate dealing thereafter with the case of a girl under section 14 to accept as conclusive evidence which has been held not to be so. Thus while I sympathise with the persons interested in the welfare of this and other girls in like circumstances, and while I myself also feel that it would be in the best interests of the girl to remain under proper care until she reaches the age of 18, I do not find it possible to hold on the facts of the present case that the detention of the girl is legal. I accordingly accept the petition of the girl's father and direct that the girl be released from detention.