

CRIMINAL MISCELLANEOUS

Before Daya Krishan Mahajan and Shamsheer Bahadur, JJ.
MST RAM KALI,—Petitioner.

versus

A. C. AGGARWAL AND ANOTHER,—Respondents.

Criminal Writ No. 3-D of 1963,

Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956)—S. 18—Whether ultra vires article 14 of the Constitution.

Held, that whenever action is taken under section 18 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, independently of section 7 of the Act, it would offend Article 14 of the Constitution and to that extent section 18 would be *ultra vires* the Constitution. The discretion has been left with the magistrate to proceed in the case of persons similarly situate either under section 7 or section 18 of the Act and no criteria is laid down in the Act which can be said to be reasonable criteria for picking and choosing one out of the number of persons similarly situate for being proceeded against under section 7 and others so similarly situate for being proceeded against under section 18. But section 18 must stay on the statute book because action can legitimately be taken under this provision after proceedings have been concluded under section 7 of the Act for in that matter it is complementary to section 7 and also that proceedings can simultaneously be started under section 7 and under section 18. If the latter course is adopted, there would be no scope for the argument based on discrimination. That argument is only available in one contingency, that is, where action is taken only under section 18 and section 7 is given a go-by.

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Sept. 9th.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari may kindly be issued quashing the proceedings initiated against the petitioner by Respondent No. 1 at the instance of Respondent No. 2 and by issuing a writ of mandamus commanding the respondent not to interfere with the right of the petitioner to reside at 54, G. B. Road, Delhi.

GURCHARAN SINGH, ADVOCATE, for the Petitioner.

S. V. GUPTA, ADDITIONAL SOLICITOR-GENERAL, R. H. DHEBAR, BISHAMBER DAYAL, ADVOCATES, for the Respondents.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This order must be read in continuation of our order dated the 23rd July, 1963. By this order, Criminal Writ Petitions No. 3-D, 4-D, 5-D, 6-D, 7-D, 10-D and 12-D of 1962 will stand disposed of.

In order to determine the *vires* of section 18 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (No. 104 of 1956)—hereinafter referred to as the Act—we issued notice to the Attorney General of India. Shri S. V. Gupta, Additional Solicitor General, appeared on behalf of the Attorney General and addressed us on the question of the *vires* of section 18 of the Act.

The argument advanced by the learned counsel is that section 18 of the Act is directed against premises and not person; and, therefore, it covers a separate field than that which is covered by section 7 of the Act. It was also maintained that if action is taken under section 18 in the first instance, it does not debar the Magistrate from taking action under section 7. It was, however, conceded, and rightly, that there is no provision in the Act which makes it incumbent upon the Magistrate having taken action under section 18 to necessarily take action under section 7. He may or may not take action under section 7, just as a Magistrate who takes action under section 7 may take action under section 18(2), but no valid argument was addressed to us which, in any way, would furnish an answer to the problem that confronted us, namely, that the discretion is left with the Magistrate to proceed in the case of persons similarly

situate under section 7 while in the case of other persons similarly situate under section 18. There is no criteria laid down in the Act nor was any attempt made by the learned counsel to indicate to us from the scheme of the Act any criteria which could be said to be a reasonable criteria for picking and choosing one out of the number of persons similarly situate for being proceeded against under section 7 and others so similarly situate for being proceeded against under section 18. It was admitted by the learned counsel that to bring home the charge under both sections 7 and 18, the same bundle of facts has to be proved, that is, it has first got to be established that the place which is sought to be attached under section 18 is within 200 yards of a public place and is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade. That is what has also to be proved in section 7. The learned counsel maintained that the proceedings under section 18 are quasi-judicial in nature and the power to proceed having been entrusted to a Magistrate who is conversant with judicial procedure it is expected that he will follow the rules of natural justice and only come to a finding on proper evidence and not otherwise. But that does not solve the problem. The problem is : Why proceedings are sought to be taken against one person under section 7 and against another under section 18 when both the persons are identically situate. It cannot be overlooked that under section 7 the matter has to be tried on evidence which has to be judged in the light of the rules laid down in the Indian Evacuee Act. An appeal is provided against conviction. It is no doubt true that no appeal is provided against the order passed under section 18 and that such a non provision will not, in any way, affect the vires of that provision because the consequences which ensued under section 7 are totally different from these ensuing under section 18 when the

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proceedings are taken under either of the aforesaid provisions. That is so, but there is no rational basis for making the selection for proceeding against two persons similarly situate—one under section 7 and the other under section 18 of the Act. Therefore, the choice must inevitably lead to invidious discrimination which discrimination cannot be explained on any rational basis. It is well-known that the Magistrates enjoy dual capacity. In one capacity they are the parts of the executive machinery, while in the other they act as Courts and try offences under the Code of Criminal Procedure in judicial capacity. This distinction seems to have been maintained in the present Act where the offences under the present Act are triable by Courts and proceedings under section 18 are to be resorted to by a Magistrate and it, therefore, cannot be said that the Magistrate when he is acting under section 18 is acting as a Court. If that were so in section 18 the word 'Court' would have been mentioned and not 'a Magistrate'. The offences under the Act have been made cognizable under section 14 of the Act. Section 29 of the Code of Criminal Procedure, which is in these terms:—

“29. (1) subject to the other provisions of this Code, any offence under any other law shall, when any court is mentioned, in this behalf in such law, be tried by such Court.

(2) when the court is so mentioned, it may be tried by the High Court or, subject as aforesaid, by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable”.

provides for trial of offences under other laws. Section 190 of the Code of Criminal Procedure prescribes that any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate

specially empowered in this behalf, may take cogni- Mst. Ram Kali
 zance of any offence upon receiving a complaint of v.
 facts which constitute such offence, upon a report in A. C. Aggarwal
 writing of facts made by any police-officer; or upon and another
 information received from any person other
 than a police-officer; or upon his own know- Mahajan, J.
 ledge or suspicion, that such offence has been
 committed. Sub-section (2) of section 190 of the
 Code of Criminal Procedure provides that the State
 Government, or the District Magistrate, subject to the
 general or special orders of the State Government, may
 empower any Magistrate to take cognizance under sub-
 section (1), Clause (a) or clause (b) of offences for
 which he may try or commit for trial. Sub-section (3)
 of this section provides similarly for trial or for com-
 mitment for trial of offences taken cognizance of
 under clause (c) of sub-section (1) of section 190.
 Section 191 of the Code provides for the transfer of
 case where cognizance has been taken by the Magis-
 trate under sub-section (1) clause (c) of section 190.
 Therefore, it will be clear that when the facts are
 reported to or come to the knowledge of the Magis-
 trate, which facts are common both to section 7 and
 section 18 of the Act, the Magistrate can take action
 either under section 7 or under section 18 of the Act.
 It is not made incumbent upon him to take action
 under section 7 first. In the one manner, section 18
 is complementary to section 7, but that is only where
 action is taken under section 7 in the first instance;
 but where action is taken under section 18 in the first
 instance then the Magistrate can, if he is so minded,
 refuse to take action under section 7. The only
 difference that I can see why action should be taken
 under one and not the other provision is that the
 standard of proof required under section 7 is the
 standard which the Courts need when any criminal
 offence is tried, whereas the standard of proof re-
 quired under section 18 would not be that standard of

Mst. Ram Kali ^{v.} proof, or may fall short of the standard of proof.
 A. C. Aggarwal and another v. Barring this difference, there seems to be no difference
 Mahajan, J. why the cases of persons who would on the given set
 of facts be guilty of offences under section 7 and
 liable to be proceeded against under section 18 should
 be differently treated. To this extent there seems to
 be no escape from the conclusion that where recourse
 is merely had to section 18 and go-by is given to section
 7, it has been done purely on a basis of invidious
 discrimination and not otherwise. That being so, it
 must be held that whenever action is taken under sec-
 tion 18 independently of section 7, it would offend
 Article 14 of the Constitution and to that extent
 section 18 would be *ultra vires* the Constitution. But
 section 18 must stay on the statute book because action
 can legitimately be taken under this provision after
 proceedings have been concluded under section 7 of
 the Act for in that matter it is complementary to
 section 7 and also that proceedings can simultaneously
 be started under section 7 and under section 18. If
 the latter course is adopted, there would be no scope
 for the argument based on discrimination. That
 argument is only available in one contingency, that is,
 where action is taken only under section 18 and sec-
 tion 7 is given a go-by. In the light of these obser-
 vations, these petitions must succeed and the notices
 issued under section 18 and the orders passed in con-
 sequence thereof must be struck down on the ground
 that recourse cannot be had to section 18 divorced
 from section 7 of the Act on the ground that such a
 procedure would offend the provisions of article 14 of
 the Constitution being discriminatory *vis-a-vis* persons
 similarly situate. These petitions are allowed and
 the impugned orders are quashed.

Shamsher
 Bahadur, J.

SHAMSHER BAHADUR, J.—I agree.

B.R.T.