
Priya Vs State of Madhya Pradesh and Others

Writ Petition No. 2114 of 2000

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Sept. 11, 2001

Acts Referred:

Constitution of India, 1950 " Article 226, 227, 46#Criminal Procedure Code, 1973 (CrPC) " Section 82, 97#Immoral Traffic (Prevention) Act, 1956 " Section 15(5), 16, 16(1), 16(2), 17(2)#Penal Code, 1860 (IPC) " Section 34, 344, 366, 376#Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 " Section 3

Citation: (2002) 1 JLJ 354 : (2001) 4 MPHT 223 : (2002) 1 MPJR 129 : (2001) 3 MPLJ 509

Hon'ble Judges: S.P. Shrivastava, J; R.B. Dixit, J

Bench: Division Bench

Advocate: Rajendra Soni, for the Appellant; K.N. Gupta, Government Advocate, H.K. Shukla and S.C. Tyagi, for the Respondent

Judgement

R.B. Dixit, J.

The aboriginal tribes in the real sense are the children of the mother nature. They are marked with the influence of warmth and cold, sunshine and

rain wind and storm upon their own personal comfort. For ages, they continued to pray and worship the fire and the forest, the sun and the cloud,

but now it seems that their dreams are being invaded from the flickering light of the modern world.

The present is an unfortunate story of plight of an unfortunate girl belonging to Mobia community of an area inhabited by aboriginal tribes of

Chhattisgarh. Petitioner Priya (whose real name is Vaishakhi alias Pushpa), who had changed her name as Priya to escape herself from ignominy

after her sexual exploitation in dacoity infested area of Bhind. Out of three, she is the eldest daughter in the family and had dropped out of the

Govt. Middle School, Mirgaon after she failed in Class VIIth in the year 1998. As per school records, her date of birth is 30-6-1982. In the year

1999, she came in contact with one Lalit Rawat and developed intimacy with him. Since Lalit Rawat was already married and was arrested on the

complaint of his wife, the petitioner was compelled to lead an immoral life through Smt. Beena, respondent No. 8, her close relation. Daver Chand

was younger brother of Beena who was married to Urmila, younger sister of the petitioner. In the month of March, 2000, Daver Chand took the

petitioner to Smt. Beena at Bhind, who was an active participant of a Brothel House, run by Smt. Kamla, respondent No. 7 in Old Red Light

Area, situated at Hazarilal Ki Sarai, Neemwali Gali, Bhind. By persuasion or by force, the petitioner too was admitted in this Brothel House, and

was sexually exploited for the benefit of the two ladies.

Shri Anil Kumar Singh Bhadoriya a bachelor practising Advocate of Bhind claiming himself to be a sympathizer, of the petitioner, said to have

come in the contact of the petitioner with the help of one Natraj Photo Studio, situated opposite to the house of respondent Nos. 7 and 8. The

petitioner through Shri Bhadoriya, Advocate moved an application for her rescue, before the Sub-Divisional Magistrate, Bhind (in short SDM).

The SDM issued a search warrant u/s 97 of the Code of Criminal Procedure, for the production of the petitioner, pursuant to which, Town

Inspector of City Kotwali, Bhind recovered the petitioner from the illegal custody of the respondent Nos. 7 and 8. The SDM after recording the

statement of the petitioner, remanded her to be kept at Short Stay Home in Nari Niketan, Gwalior.

Feeling aggrieved by the order of SDM Shri Anil Kumar Singh Bhadoriya, has filed the present writ petition of Habeas Corpus on behalf the

petitioner Priya, alleging that the petitioner was remanded to Short Stay Home by the SDM against her will and she is being subjected to bad

behaviour and forced to surrender to the dictates of the Superintendent of Nari Niketan.

The petitioner was produced before this Court from Short Stay Home and she informed that she is comfortable there and was looked after very

well. This in our opinion, totally belied all the allegations of Shri Bhadoriya, Advocate in so far as lodging of petitioner at Nari Niketan is

concerned. The Superintendent of Nari Niketan in her affidavit had stated that Shri Bhadoriya, Advocate wanted the petitioner to get out of the

Short Stay Home and on 6-11-2000, approached her offering to marry the petitioner, however, he was not allowed to meet the petitioner in

absence of any permission from the Court.

In so far as other allegations against respondent Nos. 7 and 8 regarding their indulgence in the trade of sale of girls in cities like Bombay and from

there to Dubai for sex purposes, CBI enquiry was ordered. The CBI enquiry revealed that the petitioner was enticed by Beena to accompany her

on the pretext of offering a job of a Nurse in the Hospital at Bhind, where however, she was subjected to the sexual exploitation by force. The

enquiry further revealed that in Sept., 2000, Shri Anil Kumar Singh Bhadoriya, went to Kamla's Brothel House as a customer and had sexual

intercourse with the petitioner. He had enquired about her back ground and assured her of her release from the Brothel. For this end in view Shri

Bhadoriya drafted an application on behalf of the petitioner and moved it before the SDM which, ultimately led to her recovery from the Brothel.

Regarding allegations of indulging in the trade of sale of girls against respondent Nos. 7 and 8, no evidence was found in the CBI enquiry, so as to

establish their links with the city of Bombay or Dubai. However, it was found that Smt. Kamla, respondent No. 7 belongs to Beria tribe and she

had been running a Brothel at Hazarilal Ki Sarai, Neem Wali Gali, Bhind, for the last 20 years. In the year 1994, Police had conducted different

raids in the Red Light area of Neem Wali Gali and two criminal cases were registered against 36 persons including Smt. Kamla and Beena under

Sections 3, 7 and 8 of Prevention of Immoral Traffic Act at Kotwali Police Station, Bhind and charge-sheets were filed in the Court, which are still

pending.

CBI report further disclosed that after recovery of Priya on 22-10-2000, from Smt. Kamla's Brothel by Kotwali Police on the basis of search

warrant issued by SDM Bhind u/s 97 of Cr.PC neither any criminal case was registered by the Bhind Police nor any medico legal check up of the

petitioner was conducted. Smt. Kamla and Beena who were present at the time of Police search, were also not arrested. The local Police simply

executed the warrant and produced the petitioner. However, subsequently, on 7-1-2001, a criminal case vide Crime No. 13/2001 was registered

against Daver Chand, Jija of Priya, Smt. Kamla and Beena under Sections 366, 344 and 34 of IPC in Kotwali Police Station in response to the

letter written by Addl. Advocate General of M.P. High Court, Bench Gwalior.

Shri H.B. Singh, SDM Bhind, before whom, Priya was produced, had recorded her statement in a slip shod manner and passed a casual order for

her being kept in a Short Stay Home. We were surprised to note that even in the search warrant issued by SDM Bhind pursuant to his order dated

21-10-2000, it has been specifically mentioned that there are reasons to believe that the petitioner is wrongfully confined by Beena in the house of

Kamla for the purpose of carrying out the flesh trade and her life was in danger, still, while recording her statement, the learned SDM has not cared

to ask a single question regarding the fact of her being exploited sexually.

Section 16 of Immoral Traffic (Prevention) Act, 1956 (in short the "Act") provides that where a Magistrate, has reason to believe from the

information received from Police or from any other person authorised by the State Govt. in this behalf, or otherwise, that any person is living or is

carrying on or is being made to carry on, prostitution in a Brothel, he may direct a Police Officer, not below the rank of Sub-Inspector, to enter

such Brothel and to remove therefrom such person and produce her before him. The police officer after removing the person, shall forthwith

produce him before the Magistrate, issuing the order. Sub-section (2) of Section 17 of the Act, further provides that when the person is produced

before the appropriate Magistrate, under Sub-section (5) of Section 15 or the Magistrate under Sub-section (2) of Section 16, he shall after giving

him/her an opportunity of being heard, cause an enquiry to be made as to the correctness of the information received under Sub-section (1) of

Section 16, the age, character, antecedents of the person and suitability of his/her parents, guardian or husband for taking charge of him/her and

the nature of the influence which the conditions in his/her home are likely to have on him/her if he/she is sent home, and for this purpose, he/she may

direct a probation officer appointed under the Probation of Offenders Act, 1959, to inquire into the above, circumstances, and into the personality

of the person and the prospects of her rehabilitation.

In discharging his function under Sub-section (2), a Magistrate, may summon a panel of five respectable persons, three of whom shall, wherever

practicable be women, to assist him and may, for this purpose, keep, a list of experienced social welfare workers, particularly women social

welfare workers, in the field of suppression of immoral traffic in persons. Section 18 of the Act, lays down the procedure for closure of brothels

and eviction of offenders from the premises.

Here it will not be out of place to mention that in the year 1988, two public interest writs bearing No. M.P. 16/1989 and 427/1989 (Ramsanehi v.

State of M.P. and Ors.), were filed in this Court complaining of and bringing to the notice of this Court the racket in women trafficking, pointing out

two most unsatisfactory implementations of the suppression of Immoral Traffic in Women and Girls Act, 1956 in the State of M.P. The Division

Bench of this Court by the interim order dated 12-3-1989, directed that as and when any application to any Court is made, claiming custody of

any such girl, it shall be duty of that Court to stay hands and not to pass any instant order thereon but to hear the girl and make enquiry as to

whether, the girls could be victim of sexual exploitation and the application was made bona fide in her interest. In any case, in so far as orders of

transferring custody are to be made, that power shall be exercised only by the learned Sessions Judges of the Districts and the orders shall be

passed after hearing the girl and after holding proper enquiry. The direction was made in exercise of supervisory powers of this Court under Article

227 of the Constitution of India. The then Dy. Advocate General, Gwalior was asked to take necessary steps administratively to ensure that the

directions are issued relating thereto, by the State and the concerned officers of the State duly comply with the same at all levels and the Bench

Registry was also directed to circulate with due despatch copies of the said order to all the Sessions Judges of the State for compliance at their

level and at the levels of subordinate Courts.

While finally disposing of the above mentioned writ petitions of this Court, Hon"ble Shri Justice R.C. Lahoti (as he then) speaking for the Bench,

pointed out that ""from the materials brought on record, and in the facts and circumstances as it stands, we are constrained to observe that the State

of M.P., has certainly failed in devoting such care and attention as was expected of it in implementing the provisions of the Act, in the State of M.P.

especially, in Gwalior Division. In several areas of Gwalior, Bhind, and Morena Districts where sexual exploitation and trafficking in women and

girls is on increase, prostitution has been prohibited vide notification dated 24-11-90, issued during the pendency of this petition...."" It was further

observed that ""the Bench has also not been apprised of any special care taken or effort made by the State Government in special training and

equipping such Special Police Officers with know-how and technique in dealing with socio-economic epidemic. We do not find anything having

been done by the State other than discharging the routine functions in the routine manner in implementing the provisions of the Act and making the

real efforts for curbing evil of immoral traffic""....

The directive principles of State policy as envisaged under Article 46 of the Constitution of India, provides that the State shall promote with special

care the educational and economic interests of the weaker section of people and in particular all the Scheduled Castes and Scheduled Tribes and

shall protect them from social injustice and all forms of exploitation. ""Needless to say"" recalled His Lordship Justice Lahoti, in the case of

Ramsanehi (supra), ""that the social evil of immoral trafficking in women and girls is as old as women civilization itself, deep rooted in the society

indulged into, propagated and protected by white-collar criminals, affluent financially and politically at times can never be brought in control, not to

speak of being eradicated, unless and until efforts as intensive and extensive as the evil itself are adopted with sincerity and devotion by those who

matter. The country is amidst process of one of crucial mid-term polls, but none of the election manifestoes of several political parties appear to

have taken note of this evil assuring the society of its consecrated efforts at eradicating or curbing the evil"".....

Although, during the pendency of the present writ petition, additional submissions have been filed on behalf of the State, stating that on the basis of

statement given by Ku, Priya, a case under Sections 366, 344, 376/34 of Indian Penal Code read with Section 3(i)(xii) of the Scheduled Castes

and Scheduled Tribes (Prevention of Atrocities) Act, and Sections 3, 7 and 8 of Prevention of Immoral Traffic Act, were registered against Smt.

Kamla, Beena and brother-in-law of Priya namely Daver Chand and subsequently, the name of Shri Anil Kumar Singh Bhadoriya was included,

however, the accused persons are absconding and action u/s 82 of Cr.PC, against all the accused persons, are being taken. A Police Chowki has

also been established in the aforesaid Red Light Area of the Bhind to check any activity under Immoral Traffic and constant patrolling has been

intensified. The State Government for the eradication of the evil, had launched a scheme known as Jabali Yojna in the year 1992-93 under Mahila

and Bal Vikas Department, in which, sub-castes known as Bachhda and Bedia were included and there is programme for rehabilitation and

upliftment of women of these castes. Some provisions have also been made under this scheme to take up measures for the education and welfare

of children and other family members of such women of these communities. The Govt. has also prepared to grant 100% aid to the institutions

which are engaged in this work. In particular, in Bhind area, a voluntary institution known as ""Oshika Mahila Mandal"" is being run under this

scheme.

For the present, we are satisfied that appropriate measures were taken to prevent recurrence of such evils. However, in our opinion, what is

lacking, is the due execution of scheme with sincere devotion and efforts. We express our concern for the inaction on the part of Distt.

Administration at Bhind to deal with the situation effectively in time. We therefore, direct, that immediate departmental action be taken against the

then SDM, Bhind Shri H.B. Singh for not taking prompt action to get the criminal cases registered against respondent Nos. 7 and 8 and also for

not making any arrangement for medical check up of the petitioner. It is further directed to initiate necessary enquiry for taking action against such

Police Officers who are responsible for not taking any preventive and positive action in regard to the activities of a Brothel being run by the

respondent Nos. 7 and 8.

So far as the present writ petition for issuance of writ of Habeas Corpus is concerned, the petitioner who was given chance many a times to

appear before us has expressed her desire to go with her father, and it is also borne out from the report of CBI that she has attained the age of

majority. She is therefore, allowed to be released from the Short Stay Home (Nari Niketan), Gwalior to go with her father. It is further directed

that the petitioner and her father being the members of Scheduled Caste and having no means to bear the expenses to go up to Raipur, the

constable who has brought her father from Raipur, shall accompany them back to their place of residence and Govt. shall arrange for conveyance

by train in the lowest class.

It is further directed that the Superintendent of Police, Raipur, shall keep a watch over the girl Ku. Priya, without interfering in any manner in the

liberty of the petitioner to see that she does not fall prey to any such anti-social elements, which may ruin her life in any way and to see that she is

not made target of any sexual exploitation till the pendency of the criminal cases registered at Bhind, where her appearance as a witness may be

required.

Since in our opinion, the writ petition has achieved its purpose in getting the petitioner set at liberty who has shown her willingness to go with her

father, it is disposed of with the observations and the directions indicated hereinabove. A copy of CBI report be sent to the Chief Secretary for the

State of Madhya Pradesh for initiating necessary departmental enquiry against the concerned erring officials as indicated hereinabove.

It also seems to us that the concerned State authorities have failed to follow the directions and the procedure as provided for the production of a

women recovered from the brothel house as indicated in the final order passed by a Division Bench of this Court while disposing of the Writ

Petition No. 1396/1988 and 427/1989 referred to hereinabove. However, taking a lenient view, we part with this case with the hope and trust that

the same shall be strictly followed henceforth by all concerned without giving rise to any such occasion where it may become necessary for this

Court to take any penal action.