

(2006) 06 CAL CK 0007

Calcutta High Court

Case No: C.R.R. No. 2822 of 1999

Nisha Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: June 28, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 401, 482
- Immoral Traffic (Prevention) Act, 1956 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 34, 373

Citation: (2007) 2 ALT(Cri) 9**Hon'ble Judges:** Arun Kumar Bhattacharya, J**Bench:** Single Bench**Advocate:** Milan Mukherjee and Ayan Bhattacharya, for the Appellant; Sk. Kasem Ali Ahmed, for the Respondent**Final Decision:** Allowed

Judgement

Arun Kumar Bhattacharya, J.

The hearing stems from an application u/s 401 read with Section 482 CrPC filed by the petitioner praying for quashing the proceeding being G.R. Case No. 1966/97 under Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 arising out of Burtolla P.S. Case No. 287 dated 20.11.97 u/s 373/34 IPC pending before the Court of learned Additional Chief Metropolitan Magistrate, Calcutta.

2. The circumstances leading to the above application are that a case being C-286 dated 20.11.97 u/s 373/34 IPC was started against Poonam Singh and Sabita Singh. On 02.04.1998 the petitioner's grandmother filed a petition for return of the petitioner to her custody, while a similar petition was filed on 06.04.98 by a voluntary organisation "Sanlaap" for custody of the petitioner, and the learned Additional Chief Metropolitan Magistrate allowed the prayer of the said voluntary organization. The petitioner's grandmother moved before this Court u/s 482 CrPC

whereupon this Court transferred the case to the file of learned Chief Metropolitan Magistrate, Calcutta with a direction to ascertain from the petitioner where she likes to go followed by an order of return of the petitioner to her grandmother on bond. Charge-sheet under Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 was submitted in G.R. Case No. 1966/97 showing the petitioner as an absconder, whereupon cognizance was taken on 13.07.99 and warrant of arrest was issued against her. Subsequently, warrant of arrest was recalled by the learned Additional Chief Metropolitan Magistrate and notice was issued to her.

3. It has been stated that there is no material either u/s 3 or Section 4 of the Immoral traffic (Prevention) Act against the petitioner who was produced before the Court as a victim girl and subsequently has been falsely implicated in the case.

4. Being aggrieved by continuation of the said proceeding, the petitioner has come up before this Court.

5. Mr. Mukherjee, learned Counsel for the petitioner, contended that none of the provisions of Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956, hereinafter referred to as the said Act, is applicable against his client who was produced before the learned Court below as a victim girl, and as such continuation of the above proceeding against her will be an abuse of the process of the Court. Mr. Ahmed, learned Counsel for the State, in his usual fairness, supported the above contention.

6. Section 3 of the Act provides for punishment for keeping or allowing a premises for use as a brothel, while Section 4 provides for punishment for living on the earnings by prostitution of any other person. Here, the materials available in the case diary reveal that the petitioner, aged about 15/16 years, was virtually forced by another accused to involve herself in prostitution against her will and she is the victim girl. So, there being no material either u/s 3 or Section 4 of the said Act, continuation of the above proceeding against her will be an abuse of the process of the Court.

7. Accordingly, the present application be allowed. The above proceeding being G.R. Case No. 1966/97 pending in the Court of learned Additional Chief Metropolitan Magistrate, Calcutta against the petitioner only be quashed.

Let a copy of this order be sent down at once to the learned Court below.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible.