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(1926) 01 BOM CK 0047

Bombay High Court

Case No: Criminal Reference No. 85 of 1925

Emperor		APPELLANT
	Vs	
Maridas Lazar		RESPONDENT

Date of Decision: Jan. 7, 1926

Acts Referred:

- Evidence Act, 1872 - Section 25

Citation: (1926) 28 BOMLR 298

Hon'ble Judges: Marten, J; Madgavkar, J

Bench: Division Bench

Judgement

Marten, J.

The point here is whether the accused, who is a male, can be convicted, u/s 236 (1) of the Cantonments Act, 1924, of loitering for the purpose of prostitution. The learned Sessions Judge considers that this section must be confined to female prostitution, and that, consequently, the accused cannot be convicted. He says : "Prostitution is the act or practice of a woman who prostitutes her body." With deference we do not think the expression prostitution can necessarily be confined to a woman, For instance, the expression "a male prostitute" is sometimes used. Be that as it may, what the learned Judge really asks us to do, is to insert the words "his or her own" into the section so as to make it run : "whoever in a cantonment loiters for the purpose of his or her own prostitution," &C. These words are not in the Act, and we do not see why we should in effect insert them. On the contrary it would seem desirable that even if the prostitution is that of a female, the pimp should be liable to be prosecuted just as well as the woman. This view is assisted by a consideration of the effect of the second branch of the section, viz., "or importunes any person to the COM-mission of sexual immorality." This second branch clearly applies both to a man and a woman whether as regards the person importuning or the person importuned, as indeed the learned Judge agrees.

2. We have been referred to Section 3 (6) of the Prevention of Prostitution Act 1923, where the words are, "Whoever...(6) solicits or molests any person or loiters for the purpose of prostitution." We have not got to construe that Act, but certainly the way in which it is framed does not assist tht construction which the learned Judge asks us to put upon the corresponding expression in the Cantonments Act.

3. We, accordingly, consider that the Cantonment Magistrate had power to convict the accused, and that there is sufficient evidence of "loitering" apart from the statement made to private Fogg of the Garrison Military Police, which it is suggested to us was a confession within the meaning of Section 25 of the Indian Evidence Act, and, therefore, inadmissible. But taking all the facts into consideration, we think it will be sufficient, as regards the sentence, if the accused Maridas Lazar"s imprisonment is limited to that which he has already undergone. I would order accordingly.

Madgavkar, J.

4. I agree.