

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 120 of 2015
Reserved on: 28.07.2023
Date of Decision: 22.09.2023

Vikash alias Vikas & others

....Petitioners

Versus

State of Himachal Pradesh & others

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹

For the petitioners: Mr. Rahul Mahajan, Advocate.

For respondent No. 1/State: Mr. B.N. Sharma, Additional
Advocate General.

For respondents No. 2 & 10: Mr. Rohit Kumar, Advocate.

Sushil Kukreja, Judge

The instant petition is maintained by the petitioners, who were accused persons before the learned Trial Court (hereinafter referred to as “the accused persons”), under Section 482 Cr.P.C. praying to quash and set-aside order dated 18.03.2015, passed by learned Additional Sessions Judge-II, Solan, District Solan, H.P., in Revision Petition No. 12-FTC/10 of 2013, titled as State of H.P. vs. Gurjinder Singh & others, whereby order dated 12.12.2012,

passed by learned Chief Judicial Magistrate, Solan, District Solan, H.P., in Criminal Case No. 72/2 of 2005, was set-aside.

2. The brief facts of the case can be encapsulated as under:

2(a). On the intervening night of 5/6th July, 2005, around 01:00 a.m. at place Kumarhatti, a police party was on patrolling duty. Police received a secret tip-off that some male persons, alongwith girls have come to Hotel Millennium, Kumarhatti, in vehicles No. CHQ-I-7159 and UP-16D-0752 and they were doing flesh trade in the aforesaid hotel in connivance with the Manager of the hotel. One Shri Govind Ram was associated by the police, as an independent witness, and around 01:15 a.m. the Manager of the aforesaid hotel was interrogated. Subsequently, the aforesaid hotel was raided and rooms were searched. During search of room No. 204, accused Rekha and Vikas and in room No. 205 accused Pinky and Arun Kumar were found naked. In room No. 208 accused Vijay Kumar, Champa Thapa and Anjali were found naked. During the course of interrogation the accused persons divulged that accused Raj Kumar,

Rahul, their wives and Parmod brought them to the aforesaid hotel for prostitution. They further divulged that accused Arun Kumar and Vijay had disclosed that they had paid Rs.5000/- to Parmod and other accused accompanying them for prostitution. It was also disclosed that other accused persons were sitting in room No. 201. During search of room No. 201, a lady alongwith child and two other ladies were found and they fled away from the spot, but they were apprehended by the police. The apprehended ladies disclosed their names as Khema Devi, Asha Devi and Anita. The male persons, who ran away from the spot, taking advantage of darkness were the other accused persons. SI Meenakshi sent the *rukka* to Police Station, Dharampur, whereupon a formal FIR was registered against the accused persons. Thereafter, the police completed all the codal formalities. Police effected the relevant recoveries, prepared the spot map and recorded the statements of the witnesses. During the course of investigation, it was unearthed that on the intervening night of 5th/6th July, 2005, around 01:00 a.m., accused Gurjinder Singh, Manager and accused Gagandeep Singh, owner of the Hotel Millennium allowed the premises of

the hotel to be used as brothel for prostitution and they knowingly lived on the earning of prostitution and also induced or took other accused for prostitution and lived on the earning of prostitution by exercising control, directions and influence over the movement of accused persons, viz., Parmod, Rahul, Raj Kumar, Asha, Anita, Chanda Thapa, Anjali and Khema Devi by compelling them for prostitution and induced them for prostitution. After completion of investigation, police presented the *challan* in the learned Trial Court.

2(b). The learned Trial Court, after conclusion of the trial, discharged the accused persons under Sections 3,4 and 5 of the Immoral Traffic (Prevention) Act. Being dissatisfied, the State preferred a revision petition before the learned Additional Sessions Judge-II, Solan, District Solan, H.P., wherein the learned Court below set-aside the judgment of the learned Trial Court and remanded the case to learned Trial Court with a direction to try the case for the offences in question in accordance with law, hence accused persons, viz. Vikash @ Vikas, Vijay Kumar, Arun, Asha and Rahul @ Sanjay Kumar preferred the instant petition with a prayer to

quash and set-aside order dated 18.03.2015, in Revision Petition No. 12-FTC/10 of 2013, passed by learned Additional Sessions Judge-II, Solan, District Solan, H.P., whereby order dated 12.12.2012, passed by learned Chief Judicial Magistrate, Solan, District Solan, H.P., in Criminal Case No. 72/2 of 2005, was set-aside.

3. Respondent No. 1/State, by filing reply, contested the instant petition. The respondent No. 1/State reiterated the contents of the FIR registered against the accused persons and prayed that the instant petition, being devoid of merits, be dismissed.

4. The learned counsel for the petitioner contended that the impugned order passed by the learned Additional Sessions Judge below suffers from material illegality, as SI Meenakshi was not Special Officer, appointed on behalf of Government of Himachal Pradesh, under the Immoral Traffic (Prevention) Act, 1956 (hereinafter for the sake of brevity referred to as 'the Act') and she was not empowered under Section 13(2) of said Act to investigate, as the investigation could have been done under the said Act by a Police Officer, not below the rank of Inspector.

5. On the other hand, learned Additional Advocate General contended that the averments raised by the learned counsel for the petitioner that SI Meenakshi was not empowered under the Act to investigate the matter cannot be considered at the stage of framing of charge, as the evidence of the prosecution has not been recorded.

6. I have heard learned counsel for the petitioners, learned Additional Advocate General for respondent No.1/State as well as the learned counsel for respondents No.2 and 10 and also gone through the material available on record.

7. It is not in dispute that on the intervening night of 5/6th July, 2005, a raid was conducted by the police party, which was headed by Sub Inspector (SI) Meenakshi, Incharge CIA, Solan, on the basis of a secret information. It is also not in dispute that the aforesaid raiding party conducted the search of the rooms of the hotel and the case was also investigated by the aforesaid SI Meenakshi. At this stage, it would be relevant to reproduce Section 13 of the Act, which reads as under:-

“13. Special police officer and advisory body.- (1) There shall be for such area

to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

[(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally:

Provided that no such power shall be conferred on-

- (a) a retired police officer unless such officer at the time of his retirement, was holding a post not below the rank of an inspector;
- (b) a retired military officer unless such officer, at the time of his retirement was holding a post not below the rank of a commissioned officer.]”

8. Therefore, the perusal of the aforesaid Section shows that under the Act a special officer has to be appointed by the State Government for dealing with the offences under the Act in a particular area and the special officer shall not be below the rank of Inspector of police. Section 2(i) of the Act defines the Special Police Officer, which reads as under:-

“2(i) “special police officer” means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act.”

9. The Government of Himachal Pradesh had issued Notification No. Home(A)B(16)-4/97, dated 24.10.2002, appointing the following official of District Police, as Special Police Officers, in their respective jurisdiction, in respect of the State of H.P. for dealing with the offences under Section 2(1) read with Section 13 of the Act:

Designation of Police Officer	Area/jurisdiction
1. Inspector of Police who are station functioning as SHOs	Within area of the police Station
2. Deputy Supdts. Of Police Posted at District Hqrs/Sub Divisional Police Officers.	Within such areas of the Police stations under their Supervision charge in which SHOs are in the rank of Sub-Inspector.
3. Additional Supdts. Of police	Entire District, in which they are posted.

10. Since in the instant case the investigation was carried out by SI Meenakshi and she was not empowered under Section 13(2) of the Act to investigate the case, as the investigation under the Act can be carried out only by special police officer, not below the rank of an Inspector of police. In

State of H.P. vs. Sardara Singh, Latest HLJ 2009 (HP) 35,

in para 10, it has been held as under:

“10. In order to effectively enforce the provisions of the Act, it is essential that the officers are duly authorized as per Section 13 of the Act. Section 13(2) provide that the Special Officer shall not be below the rank of Inspector of Police. This notification is intended to achieve the above purpose.

Since the notification in the instant case is subsequent to the alleged incident, thus it is futile to the learned law officer to contend that at the stage of framing of charge, the date of notification is not be seen. When the Investigating Officer in the present case could not have exercised the powers of investigation, arrest, seizure etc., the whole evidence so collected and produced before the Court is an exercise in futility and the prosecution case is bound to fall to doll-drums even on merits.”

11. Hence in view of the judgment passed by this High Court as well as in view of the Notification dated 24.10.2002, issued by the Government of Himachal Pradesh, since the investigation has been carried out by Sub Inspector Meenakshi, who was not empowered under Section 13(2) of the Act to investigate the case, the instant petition is allowed and the impugned order, dated 18.03.2015, passed by the learned Additional Sessions Judge-II, Solan, District Solan, H.P., in Revision Petition No. 12FTC/10 of 2013, is quashed and set-aside and the order, dated 12.12.2012, passed by

learned Chief Judicial Magistrate, Solan, District Solan, H.P.,
in Criminal Case No. 72/2 of 2005, is restored.
Consequently, all the accused persons are discharged for the
offences under Sections 3, 4, 5 of the Act.

12. In view of what has been discussed hereinabove,
the petition stands disposed of, so also pending
application(s), if any.

22nd September, 2023
(virender)

(Sushil Kukreja)
Judge