



Pramod Bhagwan Nayak v. State of Gujarat

(2007) 1 GLR 796

Country: India

Region: Asia

Year: 2006

Court: High Court - Gujarat

Health Topics: Child and adolescent health, Health care and health services, HIV/AIDS, Infectious diseases, Poverty, Prisons, Public safety, Sexual and reproductive health, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to family life, Right to health, Right to liberty and security of person, Right to life, Right to privacy

Facts

The petitioner was challenging an order of detention for allegedly engaging in trafficking of women and girls. The grounds of the order were that petitioner was an "immoral traffic offender" which is "a person who habitually commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956)". The police recorded statements from two confidential witnesses that the petitioner had brought the women and girls to Surat, supplying them and rooms to clients, and running a brothel. It is also alleged that the petitioner is threatening anyone that confronts him and has beaten people in public. Overall, the alleged activities "are likely to cause harm, danger to life, property and public health" and that the "immoral trafficking is resulting in spreading sexual disease including dangerous diseases like H.I.V. AIDS etc."

The petitioner challenged the order stating on grounds that it was based on a solitary offence, which doesn't fulfill the element of habitually committing an offense, and that the offence can only be said to be a disturbance to "law and order" and not public order. The petitioner also procedurally challenged the order by claiming it was unacceptably delayed by two months and that the anonymous witness statements were provided by the police and were not "genuine and proper."

Decision and Reasoning

The Court found that the detention order is appropriate and rejected the petition. Even though only a solitary offence was listed in the order, the order was based on the entire magnitude of the petitioners activity, including some evidence provided by the witnesses. The use of anonymous witnesses was justified as the court found that the "witnesses were not ready and willing to come forward to register any complaint against the detenu because of fear and apprehension of insecurity to the lives." There was no delay in issuing the order as the interviews with the witnesses occurred only a day before the issuing of the order. Finally, the lower court found that the anonymous witnesses provided sufficient evidence that the magnitude of petitioner's activities violated public order. This court agreed that the alleged trafficking justified keeping the petitioner in prison.

Decision Excerpts

"20. [P]ublic order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity amongst the general public or any section thereof or grave or wide-spread danger to life, property or public health. The person indulging in such activities can be said to have involved in the activities prejudicial for maintenance of public order."

"38.4 Moreover, the amendment in the law in 1986 has amended the definition of "prostitution" (i.e. the act of a female offering her body for promiscuous sexual intercourse for hire whether in money or in kind, or whether offered immediately or otherwise) and replaced it by the following new definition "prostitution" means the sexual exploitation or abuse of persons (male or female) for commercial purposes, and the expression "prostitute" will be construed accordingly.

38.5 This new definition clearly implies that those who have to be punished under the Act are those who exploit persons through prostitution.

38.6 Most of the provisions of the Act are intended to punish the brothel-keepers, the pimps, those who live on the earnings of prostitution of another person and those who are involved in the trafficking of persons for the purpose of prostitution.â€•

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