

BUDHADEV KARMASKAR

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v.

STATE OF WEST BENGAL

(Criminal Appeal No. 135 of 2010)

JULY 26, 2012

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[ALTAMAS KABIR AND GYAN SUDHA MISRA, JJ.]

Sex Workers - Rehabilitation of - Application filed on behalf of Union of India, for modification of earlier order passed by Supreme Court on 19th July, 2011, referring certain issues to the Committee constituted by the said order itself - First modification sought was deletion of Durbar Mahila Samanwaya Samiti, from the panel on the ground that it had been actively advocating revocation of the Immoral Traffic(Prevention) Act, 1956, and also recognition of sex trade and that continuance of such Samiti in the panel was giving a wrong impression to the public that the Union of India was also inclined to think on similar lines and this wrong impression should be removed by excluding the Samiti from the panel - Second modification sought was with regard to the third term of reference: "(3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity" on the ground that wording of such reference could be suitably modified so as not to give an impression that the Union of India was in favour of encouraging the sex workers, in contravention of the provisions of the aforesaid Act - Held: The presence of the Samiti in the Committee is necessary even to function as a sounding board in respect of the problems faced by the sex workers and therefore prayer of Union of India for deleting the Samiti from the Committee is rejected - No difference would be made to the terms of reference, if the wording of the third term of reference, is modified to the following effect:-"Conditions conducive for sex workers to live with dignity in accordance with the provisions

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A *of Article 21 of the Constitution." - Said modification, should not, however, be construed to mean that by this order, any attempt is being made to encourage prostitution in any way - Immoral Traffic(Prevention) Act, 1956.*

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 135 of 2010.

From the Judgment & Order dated 25.07.2007 of the High Court of Calcutta in CRA No. 487 of 2004.

C Solicitor General of India (AC), P.P. Malhotra, ASG, Pradip Ghosh (AC), Jayant Bhushan (AC), T.S. Doabia, Ashok Bhan, A. Mariarputham, Anand Grover with Tripti Tandon, Manjit Singh, Jayant K. Sud, Dr. Manish Singhvi, AAG, Pijush K. Roy, Pallav Mongia, D.S. Mahra, Gaurav Sharma, Sushma Suri, Satya Siddiqui, S.K. Mishra, Sunita Sharma, Sadhana Sandhu, D M. Khairati, S. Wasim, A. Qadri, Anjani Aiyagari, Gunwant Dara, B.V. Balramdas, B.K. Prasad, Manpreet Singh Doabia, Kiran Bhardwaj, Tarjit Singh, Kamal Mohan Gupta, Riku Sarna, Navnit Kumar (for Corporate Law Group), Asha Gopalan Nair, Mukul Singh, Pragati Neekhara Singh, Khawairakpam Nobin Singh, Sapam Biswajit Meitei, Edward Belho, Amit Kumar E Singh, K. Enatoli Sema, Sunil Fernandes, Gopal Singh, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, A. Subhashini, Anil Srivastav, Rituraj Biswas, Radha Shyam Jena, V.G. Pragasam, S.J. Aristotel, Praburamasubramanian, Jatinder F Kumar Bhatia, Mukesh Verma, Chanchal Kr. Ganguli, Abhijit Sengupta, Harendra Singh, Kuldip Singh, D. Mahesh Babu, Mayur R. Shah, Suchitra H., Amit K. Nain, Aruna Mathur, Yusuf Khan, Movita (for Arputham, Aruna & Co.), K.N. Madhusoodhanan, M.T. George, Liz Mathew, Sana Hashmi, Hemantika Wahi, Abhishek Sood, Rohit Kumar Singh, Savita G Singh, Amritananda Chakravorty, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Garima Bose, Irshad Ahmad, Balaji Srinivasan, Anitha Shenoy, C.D. Singh, Abhimanyu Singh, Anil K. Jha, Chhaya Kumari, Vibha Dutt Makhija, ANil Katiyar, P.V. Dinesh, Aniruddha P. Mayee, Subramonium Prasad for the H

appearing parties.

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The order of the Court was delivered by

ALTAMAS KABIR, J. 1. CRLMP.NO.12415 of 2012, has been filed on behalf of the Union of India, for modification of the order passed by this Court on 19th July, 2011, referring certain issues to the Committee which had been constituted by the said order itself.

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2. The first modification sought by the Union of India is for deletion of the Durbar Mahila Samanwaya Samiti, from the panel. The second modification sought is with regard to the third term of reference, which reads as follows:-

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"(3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity."

3. Appearing in support of the application, the learned ASG, Mr. P.P. Malhotra, submitted that the Samiti in question had been actively advocating the revocation of the Immoral Traffic(Prevention) Act, 1956, and had also been advocating the recognition of sex trade being continued by sex workers. The learned ASG submitted that the continuance of such Samiti in the panel is giving a wrong impression to the public that the Union of India was also inclined to think on similar lines. The learned ASG submitted that this wrong impression should be removed by excluding the Samiti from the panel.

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4. As far as the second issue is concerned, the learned ASG submitted that wording of such reference could be suitably modified so as not to give an impression that the Union of India was in favour of encouraging the sex workers, in contravention of the provisions of the aforesaid Act.

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5. We have heard Mr. Pradip Ghosh, learned senior advocate and Chairman of the Committee, as also learned senior advocate, Mr. Jayant Bhushan, who is also a member of the Committee and its co-Chairman and Mr. Grover, learned senior advocate, on the issue.

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A 6. It has been submitted by Mr. Ghosh that at the meetings of the Committee, the members of the Samiti had contributed a great deal towards the understanding of the problems of the sex workers and it was not as if the said Samiti was encouraging sex trade, but were providing valuable inputs into the problems being faced by people engaged in the trade. Mr. B Ghosh, Mr. Grover, and Mr. Bhushan, in one voice urged that the presence of the Samiti in the Committee was necessary even to function as a sounding board in respect of the problems that are faced by this marginalised and unfortunate section of society.

C 7. We agree with the submissions made by Mr. Ghosh, Mr. Grover and Mr. Bhushan, learned senior counsel, and are not, therefore, inclined to delete the Samiti from the Committee, as prayed for by the Union of India, and such prayer is rejected.

D 8. As to the second issue, it will not in any way make any difference to the terms of reference, if the wording of the third term of reference, is modified to the following effect:-

E "Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution."

9. The above modification, should not, however, be construed to mean that by this order, any attempt is being made to encourage prostitution in any way.

F 10. CRLMP.NO.12415 of 2012, is, therefore, disposed of in term of the aforesaid order.

G 11. Let this matter now be listed for consideration of the Sixth and Seventh Interim Reports, filed by the Committee, on 22nd August, 2012, at 3.00 p.m.

12. Let this Bench be reconstituted on the said date and time for the aforesaid purpose.

H **GYAN SUDHA MISRA, J.** 1. While concurring with the views of my learned brother Justice Altamas Kabir, I prefer to

add in regard to the second issue that this Court should not be misunderstood to encourage the practice of flesh trade or advocate the recognition of sex trade merely because it has raised the issue to emphasize the rehabilitation aspect of the sex workers, for which this Court had taken the initiative right at the threshold. I consider this essential in order to allay any apprehension which prompted the Union of India to move this application for modification, by highlighting that the sex workers although have a right to live with dignity as the society is aware that they are forced to continue with this trade under compulsions since they have no alternative source of livelihood, collective endeavour should be there on the part of the Court and all concerned who have joined this cause as also the sex workers themselves to give up this heinous profession of flesh trade by providing the destitute and physically abused women an alternative forum for employment and resettlement in order to be able to rehabilitate themselves. I, therefore, wish to reiterate by way of abundant caution that this Court should not be perceived to advocate the recognition of sex trade or promote the cause of prostitution in any form and manner even when it had stated earlier in its terms of reference 'regarding conditions conducive for sex workers who wish to continue working as sex workers with dignity'.

2. Thus, when we modify the earlier term of reference and state regarding conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution, the same may not be interpreted or construed so as to create an impression or draw inference that this Court in any way is encouraging the sex workers to continue with their profession of flesh trade by providing facilities to them when it is merely making an effort to advocate the cause of offering an alternative source of employment to those sex workers who are keen for rehabilitation. When we say 'conditions conducive for sex workers to live with dignity', we unambiguously wish to convey that while the sex workers may be provided alternative source of employment for their rehabilitation to live life with

- A dignity, it will have to be understood in the right perspective as we cannot direct the Union of India or the State Authorities to provide facilities to those sex workers who wish to promote their profession of sex trade for earning their livelihood, except of course the basic amenities for a dignified life, as this was certainly not the intention of this Court even when the term of reference was framed earlier.

3. We, therefore, wish to be understood that we confine ourselves to the efforts for rehabilitation of sex workers which should not be construed as facilitating, providing them assistance or creating conducive conditions to carry on flesh trade for expanding their business in any manner as it cannot be denied that the profession of sex trade is a slur on the dignity of women. Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution be therefore understood in its correct perspective as indicated above.

B.B.B.

Matter pending.