

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.716 of 2015

and

M.P.No.1 of 2015

1.Venkatachalam

2.Parthasarathi

.. Petitioners

Vs.

The Inspector of Police,
Gudiyattam Town Police Station,
Gudiyattam.

.. Respondent

Prayer: Criminal Original Petition filed under section 482 of Cr.P.C to call for the entire records pursuant to the First Information Report in Crime No.580 of 2014, on the file of the respondent dated 14.09.2014 and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.B.Lenin Balu

For Respondent : Mrs.Shabana
Government Advocate (Crl.Side)

O R D E R

The petitioners herein are accused ranked as 4th and 5th respectively in Cr.No.580 of 2014 on the file of the respondent herein dated 14.09.2014, for the offences under Sections 3 (ii), 4, 5, 6 and 7 of Immoral Traffic (Prevention) Act 1956 (herein after called as "ITP Act") and they are before this Court invoking Section 482 of Cr.P.C seeking to quash the FIR in Cr.No.580 of 2014 as illegal.

2.The case of the prosecution is that on 14.09.2014 based on a secret information on an alleged Offence of prostitution, the respondent police conducted a raid at about 06.30 p.m. in room Nos.204, 205 and 206 at Logu Lodge, Gudiyatham and found that the petitioners and some others culpable of prostitution, hence the respondent police arrested the petitioners, and others along with some women for the offence stated supra.

3. In pursuant to their arrest, Crime No.580 of 2014 was registered as against the petitioners and some others. Challenging the FIR as illegal, the petitioners are before this Court seeking to quash the same.

4. According to the petitioners, on 14.09.2014 at about 06.30 p.m., the petitioners while were engaged in an enquiry in the Logu Lodge, as to whether there is availability of rooms for their stay, the respondent police rushed into the lodge and all of the sudden arrested few persons, where misfortunately petitioners were also arrested along with the other accused for the offence under Sections 3 (ii), 4, 5, 6 and 7 of Immoral Traffic (Prevention) Act 1956 and over again petitioners were also remanded with other accused.

5. In actual the respondent police originally arrested a broker, the manager of the lodge and some women, however for litigation purpose the petitioners were inflicted with the above case falsely, as petitioners were present at that time. In fact the petitioners were projected as if customers, so as to strengthen the prosecution case.

6. According to the petitioners, the respondent police failed to follow the mandatory procedures adumbrated under the ITP Act 1956 and the respondent police in reality had arrested the petitioners herein in sheer violation of ITP Act.

7. As per Section 2 (i) and (j) of ITP Act, a "Special Police Officer" and "Trafficking Police Officer" mean

"(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;"

(j) "trafficking police officer" means a police officer appointed by the Central Government."

8. It is the case of the petitioners that the respondent neither being a Special Police Officer nor a Trafficking Police Officer, do not have authority to arrest or investigate the issue and further even the final report yet to be filed would also be an utter abuse of process of law.

9. The petitioners in this context rely on a Judgment of the Hon'ble Delhi Court made in the case of Mumtaj alias Behri Vs. The State (Govt. of NCT Delhi) (2003 Cri.L.J. 533) wherein vide para 6 of the said decision it was held that the entire proceedings conducted by Sub Inspector of Police in that case involving Immoral Trafficking (Prevention) Act, who was not appointed as Special Police Officer was held to be illegal, in

line with the Decision of the Hon'ble Apex Court in the case of Delhi Administration Vs. Ram singh.

10. Reliance was made further on the decision of the Hon'ble High Court of Kerala, in the matter of Sinu Sainudheen - Appellant Versus Sub Inspector of Police, Thrikkakara - Respondent 2002 Cri L.J. 3205, holding as following that

"11. The Sub-Inspector of Police is not an Officer competent to conduct search under Section 15 of the Act because the Section specifically provides that the special police officer or the trafficking police officer is to conduct search. Illegality in conducting search and arrest can be ground for quashing the proceedings, if it is found that search and arrest were done by the officer not in accordance with the provisions of law and the possibility of the case ending in a conviction is not there. If the proceedings are allowed to go on even after it is found that the search and arrest were not conducted on observing the mandatory provision of law, that will be an abuse of process of court. Under Section 482 of the Criminal Procedure Code, the Court will be justified in quashing the proceedings to prevent the abuse of process of court or otherwise to secure the ends of justice. In Roy v. State of Kerala (2001(1) KLT 86 (SC), the Supreme Court considered what would be the effect of search and arrest which are per se illegal. That was a case in which it was found by the Supreme Court that the search and arrest made under the provisions of the Narcotic Drugs and Psychotropic Substances Act were not in accordance with the provisions of the Act. Here also search as well as the arrest made by the Sub-Inspector of Police, Thrikkakkara are per se found to be illegal. In the decision of the Supreme Court it is observed that the power under Section 482 of the Criminal Procedure Code has to be exercised by the High Court to prevent abuse of process of Court or otherwise to secure the ends of justice. The further observation made by the Supreme Court is that where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material, but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of process of court. In this case, it is seen that search conducted and arrest made are illegal and if the proceedings are not quashed and are allowed to continue that would certainly perpetuate abuse of process of court resulting in injustice to the persons who are alleged to have committed the offence. Hence I

find that there is sufficient ground for quashing the First Information Report, Annexure 1 and further proceedings."

11. Therefore, it is the contention of the petitioners that the respondent have no authority to conduct a raid with regard to an offence under ITP Act and further in the absence of a special police officer appointed in this regard the Deputy Superintendent of Police, Vellore District cannot issue a warrant for search or arrest. However, in gross violation of the provisions of ITP Act, the search and seizure is conducted and consequently the FIR registered against the petitioners is liable to be quashed as the same is without Jurisdiction and authority.

12. It is the further contention of the petitioners that Gudiyatham is not a notified area. The Learned Counsel for the petitioner further added that though in FIR it is stated that as per the direction of the Deputy Superintendent of Police, Gudiyatham and after obtaining prior sanction from the Learned Judicial Magistrate, Gudiyatham the above search was conducted, in actual there was no such order or permission obtained from the Learned Judicial Magistrate, Gudiyatham. Again admittedly there is no material to show that the permission was obtained from any specialized officer. And even if permission is obtained from the D.S.P., the same would make no difference, since the D.S.P. himself is not a Special Police Officer authenticated under the Act and hence he cannot delegate his powers.

13. Per contra, the Learned Government Advocate (Criminal side) would submit that the respondent herein have power to conduct search and seizure under ITP Act. The Learned Government Advocate (Criminal side) further submitted that the petitioners were red handedly arrested for the offence stated supra. More over prior sanction for search was obtained from the DSP of police, Gudiyatham. Hence he prayed for the dismissal of the petition.

14. I heard Mr. B. Lenin Balu, learned counsel for the petitioners and Mrs. Shabana, learned Government Advocate (Criminal Side) for the respondent.

15. Now the only question which would resolve the issue on hand is to analyze as to whether the search and seizure conducted by the respondent is lawful or lawless in the light of Section 13 of ITP Act.

16. In fact the above question of Law was settled by the Hon'ble Apex Court in the matter of Delhi Administration v. Ram Singh (AIR 1962 SC 63) holding that violation of the mandatory

provision would lead to unsuccessful prosecution and such prosecution would only be an abuse process of court and thus the entire criminal proceeding conducted suffer from material irregularity and illegality.

17. In this regard it would be relevant to note here that in line with the above decision of the Hon'ble Apex Court, the Hon'ble High Court of Kerala in the matter of THOMAS Vs. STATE OF KERALA THROUGH SUB INSPECTOR, vide para 4 has held that "... As held by the Hon'ble Apex Court in Delhi Administration v. Ram Singh (1962 SC 63), the expression police duties will include all the functions of the police in connection with the purpose of the Act and in the special context of the Act, they will include detection, prevention and investigation of offences and the other duties which have been specifically imposed on them under the Act. Therefore, it is only the Special officer who is authorised to arrest and investigate the case under the Act, Crmc 3533/09 subject to the provisions of Section 14. Proviso to Section 14 provides that arrest without warrant can only be made by the Special Police Officer under his direction or guidance subject to his prior approval...

5. Therefore, when the arrest of the petitioner in this case is by a Sub Inspector, allegedly authorized by the Commissioner of Police, the special police officer, and the authorization admittedly does not contain the name of the petitioner or the offence for which petitioner is to be arrested, it cannot be treated as an authorization as provided Crmc 3533/09 under Section 14 of the Act. If that be so, arrest and detention of the petitioner is illegal.

6. This court in Sinu Sainudheen's case considered the effect of arrest and investigation in violation of mandatory provisions of the Act and held that violation of the mandatory provision would lead to unsuccessful prosecution and such prosecution would only be an abuse process of court which warrants quashing the proceedings under Section 482 of Code of Criminal Procedure."

18. Again the scope of search and seizure to be done under the ITP Act, 1956 and the result of non-adherence of such procedure is further dealt with by the Hon'ble High Court of Jharkhand reported in 2008 (2) JCR 153 Rehan Ahmad @ Mojahid Rehan Ahmad @ Majid Rehan Vs. State Of Jharkhand. The relevant portion is extracted hereunder:

"7. It is a matter of surprise that the Investigating Agency including the prosecution over looked the provisions of Special Act in respect of competency of a person to institute a case and to file final form under Section 173, CrPC after investigation.

Admittedly, Shri Gajanand Singh S.I. of police was not a special police officer under Section 15 of the Immoral Traffic (Prevention) Act, 1956 to make search and seizure of the vehicle. Similarly, Shri B.B. Sharma. Sub-In-spector of police below the rank of Inspector was not a special police officer under Section 13 of the Special Act to submit final form. Therefore, the entire criminal proceeding of the petitioners suffers from material irregularity and illegality.

8. I have examined the provisions of law carefully and I find substance in the arguments advanced on behalf of the petitioners that the investigation of the instant case, under the Special Act, was done by the Sub-Inspector of Police and not by a Special police officer in contravention of the provision of Section 13 of Special Act. Similarly search made and seizure list prepared by the Investigating Officer as well as the informant were not a competent police officer under Section 15 of the Act and therefore, the institution of the case as well as its investigation suffers from material irregularity and illegality and in view of the lack drop of such irregularity cognizance of the offence taken by the CJM is unsustainable."

19. Thus the above decisions reiterated by the various Hon'ble High Courts in line with the Delhi Administration v. Ram Singh reported in AIR 1962 SC 63 holding that violation of the mandatory provisions would vitiate and nullify the entire criminal proceeding.

20. Admittedly in the instant case, the respondent is not a Special Police Officer mentioned under the ITP Act, 1956 and there is no authorization to the effect of conferring such special status as to discharge a duty under ITP ACT, 1956. More so, the DSP, who had sanctioned permission to conduct the search, is also not found to be a "Special Police Officer" or "Trafficking Police Officer" as per Section 2 (i) and (j) of ITP Act. In such circumstance the search and seizure conducted is illegal and hence the FIR registered against the petitioners is liable to be quashed as the same was without Jurisdiction and authority.

21. For the forgoing reasons and in the light of the Precedents stated supra, I have no hesitation to quash the FIR, as the search and seizure were made in violation of the mandatory provisions and hence the entire criminal proceeding against the petitioners would be nothing but an abuse of process of law.

22.In the result, this Criminal original petition is allowed and the F.I.R. in Crime No.580 of 2014, on the file of the respondent/Inspector of Police, Gudiyatham Town Police Station, Gudiyatham, is quashed in respect of these petitioners A4 and A5. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Inspector of Police,
Gudiyattam Town Police Station,
Gudiyattam.

+1cc to Mr.B.Lenin Balu, Advocate, S.R.No.60657

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and M.P.No.1 of 2015

RK(CO)

RRK(19/04/2018)