

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2715 of 2019
and
Crl.MP.No.1735 of 2019

M.S.Narasimmalu

... Petitioner

Vs.

1. The State rep. by
The Inspector of Police,
Arakonam Town Police Station,
Vellore District.
(Crime No.52 of 2019)

2. G. Mohan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the impugned FIR in Crime No.52 of 2019 on the file of the first respondent police, quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manoharan

For Respondents

For R1 : Mr.Mohamed Riyaz

Additional Public Prosecutor.

For R2 : Mr.D.Dayalan

O R D E R

This petition has been filed to quash FIR in Crime No.52 of 2019 on the file of the first respondent registered for the offences under Sections 3(1), 3(2)(a), 4(1), 5(1)(b) and 6(1)(a) of the Immoral Traffic (Prevention) Act, 1956.

2. The learned counsel appearing for the petitioner submitted that the petitioner is arrayed as A1. He is working as Senior Section Officer in the Integral Coach Factory, Chennai-38. His mother-in-law one M.Amsa is the owner of the lodge viz., Sree Vari Gayathri Lodge situated at Door No.80, Dharmarayan Street, Stuarpet, Arakonam Town. The second accused entered into a lease deed with the mother-in-law of the petitioner for the period of five years, for a monthly rent of Rs.30,000/- and for a sum of Rs.50,000/- as advance. The second accused is in

physical possession and administering the entire lodge and he is also acting as a Manager of the lodge. He further submitted that while being so, on the complaint lodged by the second respondent, the above case has been registered alleging that the second accused had given signal to approach him and also given signal to ladies and thereafter the second respondent came to understand that the petitioner is the owner of the lodge and he is running prostitution with the held of prostitutes.

2.1. He further submitted that the petitioner is neither owner of the lodge nor he was presented at the time of occurrence as alleged by the defacto complainant. At the time of alleged occurrence, the petitioner was in his office between 11 a.m. to 1 p.m., on 17.01.2019. It is also evident from the CCTV footage recorded in Integral Coach Factory, Chennai. Thereafter, he also proceeded to Arokonam and went to Indian Bank ATM center, Arokonam at 2.30 p.m., and had withdrawn money. It is also evident from CCTV footage recorded in the ATM Center. He further submitted that he was called for enquiry on 17.01.2019 at about 5.30 pm., and he went to police station and he was immediately arrested and remanded to judicial custody. He never managed the said lodge and he never was indulged in any crime as alleged by the second respondent herein. He further submitted that even according to the complaint there is no ingredients to attract the offence as alleged by the prosecution. The first respondent did not follow the procedure laid down under Section 15 and 16 of the immoral Traffic Prevention Act 1956. In this regard, he relied upon the judgement of this Court reported in 2019 (1) CTC 385 in the case of Kadek Diwi Ani Rasmini Vs. K.Natarajan, Inspector of Police and he prayed for quashment of the FIR.

3. Per contra the learned counsel appearing for the second respondent submitted that the petitioner was very well present at the time of occurrence and he had given signal to the ladies and committed the offence of prostitution. He further submitted that it is only FIR and investigation has to be carried on to unearth the truth. It cannot be quashed on its threshold and he vehemently opposed this petition and prayed for dismissals of the quash petition.

4. The learned Additional Public Prosecutor submitted that there are two accused, in which the petitioner is arrayed as A1. On the complaint lodged by the second respondent the first respondent police followed the procedure contemplated under Section 15 and 16 of the Immoral Traffic (Prevention) Act and prayed for dismissal of the quash petition.

5. Heard Mr.N.Manoharan, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.D.Dayalan,

learned counsel appearing for the second respondent.

6. The petitioner is arrayed as A1. On the perusal of the records, he is not an owner of the lodge and nor administer the lodge. It is also found that the second accused entered into a lease agreement with the original owner of the lodge viz., M.Amsa, who is none other than the mother-in-law of the petitioner/first accused for the period of five years for a monthly rent of Rs.30,000/-. That apart on the date of occurrence, the petitioner was attended his office in Indian Couch Factory, Chennai and it is also evident from the certificate issued by the Senior Mechanical Engineer/Design, Integral Coach Factory, dated 29.01.2019, that the petitioner had been in his duty on 17.01.2019. Further to attract the offences under Sections 3(1), 3(2)(a), 4(1), 5(1)(b) and 6(1)(a) of the Immoral Traffic Act 1956, there is no ingredient to constitute those offences as against the petitioner.

7. Further, it is seen that the first respondent did not follow the procedure laid down under Sections 15 and 16 of the Immoral Traffic Act. In this regard, the learned counsel appearing for the petitioner cited the judgment of this Court reported in 2019 (1) CTC 385 in the case of Kadek Diwi Ani Rasmini Vs. K.Natarajan, Inspector of Police as follows :-

"42[6].The case diary clearly reveals the fact that the mandatory provisions under Section 15 of the Act, has been given a clear go by. None of the guidelines given by this Court in the judgment in Mr.S.Rangaraj & Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others, referred supra has been followed.

43[7].There is a striking similarity like the previous case in the modus operandi adopted by the Police in this case. The manner which a decoy was used and a raid was conducted and an FIR was registered, is a replica of what this Court saw while dealing with W.P.No.29995 of 2018.

44[8].The respondent Police for reasons best known to him has come to the conclusion that the Spa is a brothel and prostitution is conducted there. Unfortunately all the persons involved, right from the complainant up to the stage of conducting the raid, not one respectable inhabitant of the locality was called as a witness. There was no proof

of a single incident of prostitution, or of the activities of a prostitute.

45[9]. The respondent has assumed that he has unfettered power without realising that he is bound by the provisions of the Act. The more the power, the more must be the restrained in using the power. If the Police is permitted to exercise their powers under the Act in this manner, it is possible for the Police to brand any Spa Centre or a Massage Parlour as a brothel. It is only to keep check on the illegal use of power, mandatory requirements are prescribed under Section 15 of the Act, and has been clearly spelt out by this Court in Mr.S.Rangaraj & Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others,, referred supra. Using the Special Sub Inspector belonging to the same Police team as a decoy to lay the trap and thereafter to conduct a ride, which ultimately did not result in a scrap of material to show that a brothel was run by the Spa, has been frowned upon by this Court in the judgment in Ratnamala referred supra and this Court held that such a technique is against all standards of decency and it shocks the conscience of the Court and such methods instead of preventing the evil are likely to only encourage it.

46[10]. This Court is of the considered view that the entire action of the respondent is illegal. This is clearly a case of colourable exercise of power. If this power goes unchecked, Spa Centre or a Massage Parlour can be run only under the mercy of a Police Officer. For an extraneous consideration, the Police can brand any Spa or a Massage Centre as a brothel and even if the brothel is being run in the name of a Spa or a Massage Centre, no action will be taken. This situation is neither good for the society nor to the Police force.

47[11]. The respondent Police which is

a specialised wing to investigate cases under the Act, does not seem to resort to the provisions of Section 16 of the said Act. By resorting to Section 16 of the said Act, there will be a lot of authenticity in the action taken by the Police since information will be provided to the Magistrate by placing necessary materials and based on the direction given by the Magistrate, the Police can take appropriate action against any Spa or a Massage Centre, which indulges in prostitution. There are rotten apples in every business and stringent action must be taken against them. However, the Police must get out of this mind set of painting all the Massage Centres and Spas as brothels.

48[12].As stated above, the respondent Police being as specialised wing, should conduct the investigation in a more professional manner in accordance with the provisions of the Act, arrangements should be made for maintaining direct observations on the premises, and evidence of such observations should be recorded. Even if traps are resorted to, other evidence collected over a period of time on the observations made on the premises/centre, should also be adduced to strengthen the impression or inference of the continuous of the use of the place as a brothel. This will give a lot of authenticity while complying with the mandatory requirements under Section 15 of the Act. The Act was conceived to serve a public social purpose viz; to suppress immoral traffic in women and girls, to rescue fallen women and girls and to revent deterioration in public morals.

49[13]. In this case, the so called victims have filed independent petitions before this Court questioning the action of the respondent Police in branding them as victims. The so called confessions taken from the victims on 02.11.2018, is verbatim identical and the learned

Magistrate has proceeded to send all these girls, in a routine manner to the Home, even without enquiring the genuineness of the facts projected by the Police. It is high time that the Magistrates deal with these types of cases with more sensitivity and ensure that genuine Spas and Massage Centres are not labeled as brothels. Even at the time when the victims are produced before the Court along with the case diary, the Magistrate must ensure that the Police have followed the mandatory requirements under Section 15 of the said Act. This will go along way in preventing the Police from misusing the powers under the Act, against the Spas and Massage Centres.

50[14]. In view of the above, this Court is of the considered opinion that the continuation of the investigation against the petitioner is an abuse of process of law and in the interest of justice, the same requires the interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. In the result, the FIR in Crime No.51 of 2018, on the file of the respondent Police is hereby quashed. Accordingly, this Writ Petition is allowed. There shall be no order as to costs"

This Court held that the respondent has assumed that the police has unfettered power without realising that they are bounded by the provisions of the Act. The more the power must be the restrained in using the power. If the police is permitted to exercise there powers under the Act in this manner, it is possible for the police to brand any Spa center or a massage parlour as a brothel.

8. In the case on hand, the respondent is not a Special Officer or the Immoral Traffic Police Officer. No search was made by the first respondent on receipt of the complaint lodged by the second respondent. The first respondent did not follow any procedure as contemplated under the provisions of the Act. Without any power and jurisdiction, the respondent police mechanically, registered the case as against the petitioner, and the FIR has no legs to stand further and it is nothing but clear abuse of process of law. Therefore, this Court is inclined to quash the FIR.

9. Accordingly, the Criminal Original Petition stands allowed and the FIR in Crime No.52 of 2019, on the file of the first respondent police is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

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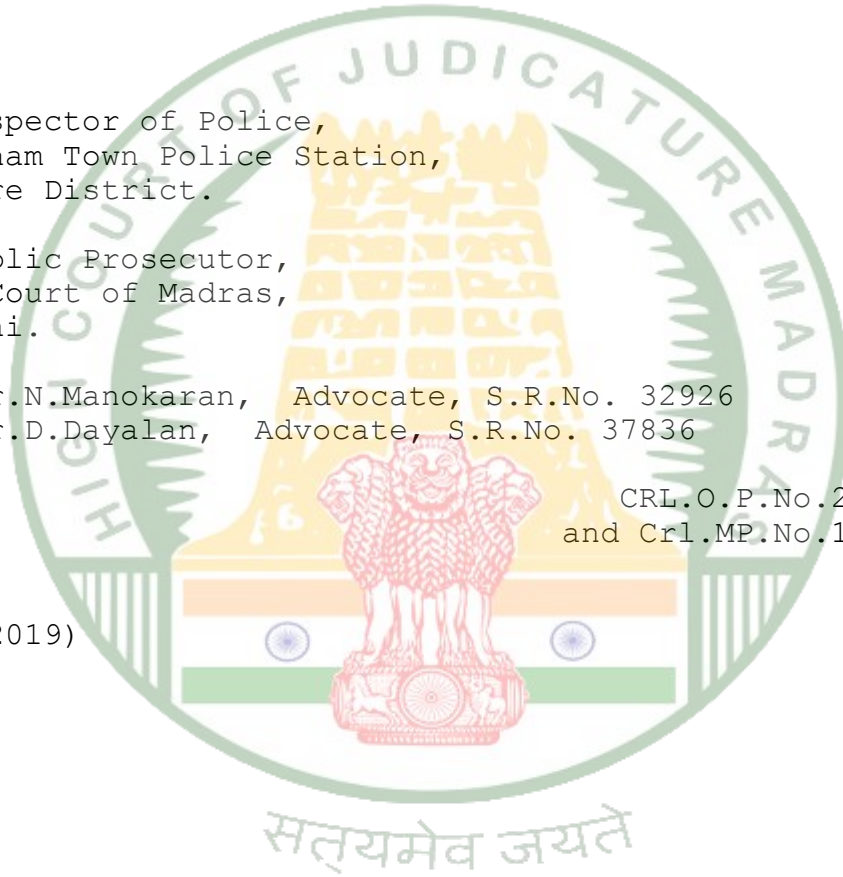
1. The Inspector of Police,
Arakonam Town Police Station,
Vellore District.
2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 32926

+1cc to Mr.D.Dayalan, Advocate, S.R.No. 37836

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and CrI.MP.No.1735 of 2019

SVI (CO)
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