



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM

THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**

CRL.O.P (MD) No.15770 of 2019

and

Cr1.MP(MD)Nos.9351 & 9352 of 2019

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Thaneshkumar Simson

... Petitioner/Accused No.1

Vs

State Rep by

The Inspector of Police,
Mathichayam Police Station,
Madurai City.

Crime No.580 of 2018.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records proceedings of the Case in C.C.No.644 of 2019 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same.

For Petitioner: Mr.M.Murugesan for Mr.R.Selvaraj

For R1 & R2 : Mr.K.Suyambulinga Bharathi,
Government Advocate(crl.side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.644 of 2019 on the file of the learned Judicial Magistrate No.II, Madurai.

2. The petitioner is arrayed as the first accused. The crux of the complaint is that on 16.10.2018 at about 16.00 hours, on the secret information, the respondent went to the house of the petitioner and found in that rental house, the petitioner and the other accused are running a brothel business in the name of 'Grand New Ayurvedic Massage Centre'. The respondent arrested the petitioner and the other accused persons and registered a case in Crime No.580 of 2018 for the offences under Sections 3 (2) (a), 4 (2) (c), 5 (1) (a), 5 (1) (d) ITP Act and the same has been taken cognizance in C.C.No.644 of 2019 before the learned Judicial Magistrate No.II, Madurai. The respondent failed to mandate the provisions under the Immoral Act, 1956. As per Section 2 (i) (j) of Immoral Act, 1956, 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.



3. In the case on hand, the respondent neither being a special Police Officer nor a trafficking police officer authority to arrest or investigate the case. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of **Mumtaj @ Behri Vs. The State (Government of NCT Delhi)** reported in **(2003 Cri.L.J. 533**, wherein, it has been held that the entire proceedings conducted by the Sub Inspector of Police in a case of involving Immoral Trafficking (Prevention) Act, who was not appointed as Special Police Officer was held to be illegal. It is relevant to note that the decision of the Hon'ble High Court of Kerala, in the matter of **Thomas Vs. State of Kerala**, which is held as follows:-

" 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 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 Vs. 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:

It is a matter 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, Cr.P.C., 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-Inspector 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



material irregularity an illegality and in view of the lack drop of such irregularity cognizance of the offence taken by the CJM is unsustainable.

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

4. In the case on hand, admittedly, the respondent is not a Special Officer as mentioned under the ITP Act, 1956. Further, it is also seen that there is no authorization to the effect of conferring as such special status as to discharge a duty under ITP Act, 1956. That apart, the Deputy Superintendent of Police, who had sanctioned permission to conduct the search, is also not found to be a Special Police Officer or Trafficking Police Officer as contemplated under Section 2 (i) (j) of ITP Act. In these circumstance, the entire proceedings initiated by the respondent is vitiated and it is nothing, but, clear abuse of process of law.

5. In view of the above, the proceedings in C.C.No.644 of 2019 on the file of the learned Judicial Magistrate No.II, Madurai, is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

dss

To

1.The Judicial Magistrate No.II,
Madurai.

2. The Inspector of Police,
Mathichayam Police Station,
Madurai City.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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