

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.23199 of 2014

and

MP.Nos. 1 of 2014

V.Selvam

...

Petitioner/Accused-8

Vs.

State of Tamil Nadu,
by The Inspector of Police,
All Women Police Station,
Thirupathur, Vellore district.

(Ref Crime No.16/2013)

Respondent/Complainant

Prayer: Petitions filed under Section 482 of Cr.P.C., seeking to call for the records in P.R.C.No.1 of 2014 on the file of the learned Judicial Magistrate No.I, Thirupathur and quash all further proceedings as against the petitioner herein.

For Petitioner : Mr.S.Santhoshkumar

For Respondent : Mrs . V.Saradha Devi,
Govt Advocate (Crl.Side)

ORDER

This criminal original petition has been filed seeking to call for the records in P.R.C.No.1 of 2014 on the file of the learned Judicial Magistrate No.I, Thirupathur and quash all further proceedings as against the petitioner herein.

2.The case of the prosecution is that the petitioner /A8 is the owner of "Vikram Lodge", Jolarpet, Junction, Jolarpet. A1 is the Manager; A2 and A7 are room boys; A3 and A4 are the pimps. A5 and A6 had sex with sex workers. That on 22.09.2013 between 21.30 hours and 00.30 hours at Vikram Lodge, which is situated within the limits of All Women Police Station, Tirupathur, A8 who is the owner of Vikram Lodge, knowingly allowed A1, A2 and A7 to utilize his lodge as a brothel house and thereby, the accused, committed an offence punishable Under section 3(1) (b) of the Immoral Traffic (Prevention) Act 1956. In the course of the same transaction,

same place, date and time A1-Govindaraj, who is the Manager and in charge of the said lodge with the assistance of other accused persons, recruited two ladies / sex workers and knowingly allowed A5 and A6 to have sexual intercourse with sex workers with knowledge that such persons may have sexual intercourse with one another, who are not spouse or legally wedded couples, and A2 and A7 assisted and abetted A1 to commit the aforementioned offences and thereby, A1 has committed the offences punishable under Section 3(a)(i), 4 and 6 of the Immoral Traffic (Prevention) Act 1956 and 370 (3) Indian Penal Code. The law enforcing agency therefore, registered a case in Cr.No.16 of 2013 and after investigation, filed charge sheet implicating the petitioner. Challenging the same, this petition has been filed by the petitioner.

3. The learned counsel appearing for the petitioner would submit that the petitioner is the owner of the lodge and he entrusted the Manager for running the lodge to A1 as well as other employees viz., A2 and A7. He would further submit that the petitioner, who is owner of the lodge, is not responsible for the illegality committed by the other accused. Further, the petitioner had no knowledge about the illegal activities and hence, implicating the petitioner to face the trial is unsustainable.

4. Adding further, the learned counsel for the petitioner submitted that the confession of an accused is not sufficient to proceed against the other co accused involved therein and it cannot be used to fill up lacunae in the material or evidence. The petitioner was simply implicated on the basis of the statement of the other accused and the final report do not disclose any material to make out any allegation against the petitioner. Hence, the learned counsel prayed for quashing the charge sheet.

5. In support of his contention, the learned counsel relied upon the judgment of this Court reported in 2014(3) MLJ (Cr1) 310 [K.Suresh Kumar vs. State rep. by Deputy Superintendent of Police, Organized Crime Unit, Crime Branch CID, Salem City], wherein, in paragraph No.17, it has been held as follows:

"17. Next comes the confession statement of the co-accused. The only co-accused, who spoke about the participation of A5 are (i) A2/Mala, wife of A1/Sivaguru, (ii) A4 Rajini and (iii) A8 Sekar. While A1 Sivaguru has in his confession statement did not refer to Suresh Kumar, A2, A4 and A8 would make similar statement like that of LW22 and LW50. All the reasoning stated against the admissibility of such statement are applicable to the statement so made by the co-accused for want of any

material to make out the agreement of minds of A5 on one hand and A1 and A2 on other hand. In addition to the same, the confession statement of the co-accused are legally impermissible in the absence of any corroborative evidence. The admission of the co-accused without any other material to corroborate the same, cannot form the basis to make out any case against the accused. The learned counsel for the petitioner, in support of such contention, against sufficiency or otherwise of confession statement and post arrest statement of the accused, relied on the following authorities: (i)1964 (2) Cri.L.J. 344 (Vol.69 C.N.105) (Haricharan Kurmi and another v. State of Bihar), (ii)2012 Cri.LJ 832 (Pancho v. State of Haryana) (iii)1947 MWN (Cri) 45 (Pulukuri Kottaya and others v. the King Emperor), (iv) AIR 1966 SC 119 (Aghnoo Nagesia v. State of Bihar) (v)1976 SCC (Cri) 199 (Mohmed Inayatullah v. the State of Maharashtra) and (vi)(2011) 1 SCC (Cri) 955 (Lohit Kaushal v. State of Haryana). In all these cases, the extent of admissibility of confession made to the police, is usefully reiterated. As far as the post arrest statement of the accused before the police is concerned, it can be, as held by the Hon'ble Apex Court, used to limited extent under Section 27, that too not against the petitioner, but against the co-accused who made such statement. It is held therein that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.... Any information which serves to connect the object discovered with the offence charged is not admissible under Section 27. No confession made to a police officer shall be proved as against a person accused of an offence. In 1976 SCC (Cri) 199, the Hon'ble Apex Court is of the view that ... only "so much of the information" as relates distinctly to the fact, thereby discovered is admissible and the rest of the information has to be excluded. In 1964 (2) Cri.LJ 344 (Vol.69 CN 105) (Haricharan Kurmi and another v. State of Bihar) the Constitution Bench of the Hon'ble Apex Court while dealing with similar statement against co-accused person, held that the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after

it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That being the law laid down by the Hon'ble Apex Court, the confession statement of co-accused cannot at all at any stage of the proceedings be solely independently relied on by the prosecution to make out any case against the co-accused. Thus, for want of materials to prove the acceptance and agreement of plan initiated on the part of A1 at the instigation of the petitioner/A5 and for other legal restriction on the admissibility of statements under Section 161 Cr.P.C, and for want of any other corroborative evidence no serious reliance can be attached to confession statement of co-accused for the purpose of proof of complexity of the 5th accused in the act of conspiracy and abetment.

6. Per contra, the learned Government Advocate (crl.side) would submit that there are specific allegations as against the petitioner to proceed with the trial. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

7. I have heard the learned counsel appearing for the petitioner and the learned Government Advocate (crl.side) appearing for the respondent.

8. It is not in dispute that the petitioner is the owner of the lodge of which A-1, A-2 and A-7 are the employees. A-1 is the Manager of the said lodge, while A-2 and A-7 are room boys. In the above backdrop, though it is the contention of the learned counsel for the petitioner that the entire affairs of the lodge were left in-charge with A-1, the Manager of the lodge and that the petitioner/A-8, was not aware of the happenings of the lodge. It is to be remembered that A-8, as the owner of the lodge, is clothed with certain duties and responsibilities, that too, as a public minded citizen to see to it that the lodge is being run within the boundaries prescribed by law. Any act, which is committed by his subordinates will equally have its effect on him and the petitioner, feigning ignorance, cannot shriek away from his responsibility towards the society.

9. Section 3 of the Immoral Traffic Prevention Act mandates punishment for keeping a brothel or allowing the usage of the premises for brothel. In the case on hand, it is not in dispute that the petitioner/A-8 is the owner of the premises, which has been used as a brothel. Therefore, Section 3 of the Act clearly gets attracted and the petitioner/A-8, as the owner of the premises, is equally liable to be prosecuted and it is not open to the petitioner/A-8 to contend that he did not have knowledge that the premises, owned by him, was being used a brothel, by A-1, A-2 and A-7. If at all the petitioner/A-8 wants to raise any such ground, it cannot be done at this point of time seeking quashment of the charges and he has to go through the rigours of trial to get his stand vindicated and not at this stage.

10. For the reasons aforesaid, this Court is of the considered view that the prayer for quashment sought for by the petitioner cannot be acceded to at this point of time and, accordingly, the criminal original petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Judicial Magistrate No.I,
Tirupattur.

2. The Inspector of Police,
All Women Police Station,
Thirupathur, Vellore district.

3. The Public Prosecutor,
Madras High Court,
Chennai.

Cr1.O.P.No.23199 of 2014
and

MP.No. 1 of 2014

MP (CO)
CB (22/09/2020)