



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

CrI.O.P.(MD)No.12956 of 2020

and

CrI.M.P(MD)No.5909 of 2020

WEB COPY

K.Kiran Kumar : Petitioner/Accused No.4

Vs.

1.The State rep. by
The Inspector of Police
Muthiahpuram Police Station,
Thoothukudi District.
(Crime No.374 of 2020) : Respondent/Complainant

2. A.Satheesh
Sub-Inspector of Police,
Muthiahpuram Police Station,
Thoothukudi District. : Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the FIR in Crime No.374 of 2020 on the file of the respondent police and quash the same as illegal as against the petitioner.

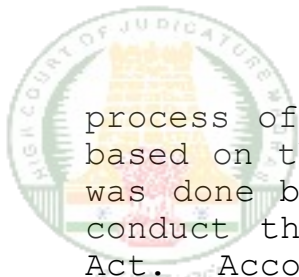
For Petitioner : Mr.V.Selvakumar
For 1st Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings of the FIR in Crime No.374 of 2020 on the file of the first respondent.

2.The allegation in the FIR is that the second respondent lodged a complaint stating that on 03.10.2020, on secret information, the respondent / police conducted search in P.R. Lodge and after verifying the register, searched the Room Nos.102 and 103 and four persons were arrested in connection with prostitution and a case was registered in Crime No.374 of 2020 for the offences under Sections 3(1), 4(1), 4(2)(b) and 4(2)(c) of Immoral Traffic (Prevention) Act) 1956.

3.The learned counsel for the petitioner would state that none of the mandatory provisions under the Act have been followed while searching the premises and the case has been registered against the settled principles of law and it is a clear abuse of



process of law. He would also state that FIR has been registered based on the complaint given by the 2nd respondent and investigation was done by the 1st respondent who is not the authorised officer to conduct the investigation as contemplated under Section 13 of the Act. According to him, even the arrest was not done in accordance with the mandatory provisions under the Act and while searching the premises, Sections 14(i)(ii) and (iii) and Section 15(2) of the Act have been violated and therefore, the learned counsel would state that the petitioner is entitled to the benefit of the order of this Court in Crl.OP(MD)Nos.16310 and 17442 of 2019 dated 10.02.2020 passed in similar circumstances. Thus, he would pray to quash the impugned FIR in Crime No.374 of 2020 on the file of the respondent police.

4.The learned Additional Public Prosecutor on instructions would fairly state that the officer who had investigated the present case is not the authorised officer or the Special Officer appointed under the Act and therefore, would state that the petitioner also stands in the same footing as that of the order passed in Crl.OP(MD) Nos.16310 and 17442 of 2019 dated 10.02.2020.

5.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the 1st respondent/police.

6.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor. In view of the order going to be passed, notice to the 2nd respondent is dispensed with.

7.In the decision relied on by the petitioner in Crl.OP(MD) Nos.16310 and 17442 of 2019 dated 10.02.2020 [Govindaraj vs. The Inspector of Police, Madurai], this Court has held as follows:-

'6.In support of his contention, the counsel for the petitioner relies on the judgment of this Court in Crl.O.P.No.15770 of 2019 dated 05.11.2019, wherein it has been held as follows:

"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

<https://hcservices.ecourts.gov.in/hcservices/> 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 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



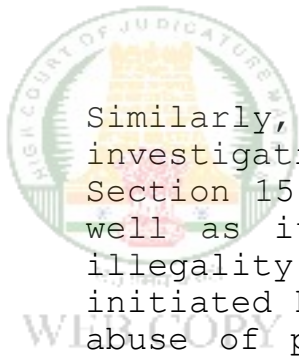
case and to file final form under Section 173, Cr.P.C., after investigation. Admittedly, Shri Gajanand Singh S.I of police was not a Special Police Officer under Section 15 of the Immoral Traffic (Prevention) Act, 1956 to make search and seizure of the vehicle. Similarly, Shri B.B.Sharma. Sub-Inspector 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 in 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 an 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 Vs. Ram Singh reported in AIR 1962 SC 63 holding that violation of the mandatory provisions would vitiate and nullify the entire criminal proceedings."

9.The guidelines given by this Court in the case of S.Rangaraj and others Vs. the Commissioner of Police reported in 2015-1-L.W. 77 and in the case of Kadek Dwi ani Rasmini Vs. K.Nataraja, Inspector of Police reported in 2019-1-L.W.161 is that the Magistrate must ensure that the police have followed the mandatory requirements under Section 15 of the Immoral Traffic (Prevention) Act, 1956. In this case the mandatory requirements have not been followed.''

8.In my considered opinion, the above order is squarely applicable to the facts and circumstances of the present case. In the case present on hand, admittedly, the respondent/Police is not a Special Officer as per Section 2(i) of the Act. Further, it is also seen that there is no authorization to the effect of conferring as
<https://hcs.ecoip.in/services> status as to discharge a duty under the Act.



Similarly, search made and seizure list prepared by the investigating officer were not the 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. In these circumstances, the entire proceedings initiated by the respondent is vitiated and it is nothing but clear abuse of process of law and therefore, cognizance of the offence taken by the learned Magistrate is unsustainable and therefore, continuation of the proceedings in my considered opinion is an abuse of process of law.

9. Accordingly, this criminal original petition is allowed and the FIR in Crime No.374 of 2020, on the file of the first respondent is hereby quashed, as against this petitioner. Consequently, connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1. The Inspector of Police
Muthiahpuram Police Station,
Thoothukudi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. (MD)No.12956 of 2020

15.12.2020

CK(CO)

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