



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2020

CORAM:

THE HONOURABLE **MR. JUSTICE A.D.JAGADISH CHANDIRA**

Crl.O.P. (MD).Nos.16310 and 17442 of 2019

and

Crl.M.P. (MD).Nos.9711 and 10277 of 2019

Govindaraj

..Petitioner/Accused No.3
in Crl.OP(MD)No.16310 of 2019

R.Vinoth

..Petitioner /Accused No.4
in Crl.O.P. (MD) .No.17442 of 2019

Vs.

1.The Inspector of Police,
S.S.Colony Police Station,
Madurai.
(Crime No.953 of 2019)

..Respondent / Complainant

2.The Sub Inspector of Police,
S.S.Colony Police Station,
Madurai.

.. Respondent/ Defacto Complainant
in both Crl.O.Ps.

COMMON PRAYER: These Criminal Original Petitions have been filed under Section 482 of Criminal Procedure Code, praying to call for records relating to the FIR in Crime No.953 of 2019 on the file of the first respondent and quash the same.
In both petitions;

For Petitioner : Mr.J.William Christopher

For Respondents : Mrs.S.Bharathi

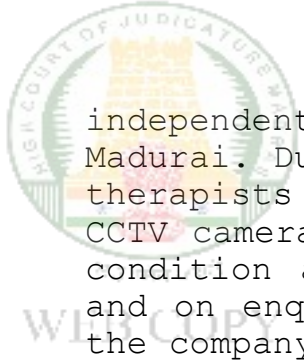
Government Advocate (Crl. Side)

COMMON O R D E R

Both the petitions have been filed seeking to quash the proceedings in Crime No.953 of 2019 on the file of the first respondent.

2.The learned counsel appearing for the petitioners would submit that the petitioners are A3 and A4 respectively in Crime No.953 of 2019 registered by the respondent for the offences under Sections 4(2) (a), 4(2)(c), 5(1) (a), 5(1)(c) of Immoral Traffic (Prevention Act) 1956 and Section 370 A (2) of IPC.

3.According to the prosecution, totally there are 9 accused in this case. On 23.09.2019, at about 1.00 p.m, the respondent had conducted a search at ISRAA BALI SPA, Door No.83, DSP Nagar Main Road, Madurai-16. Based on secret information that they were running prostitution under the guise of SPA by using young ladies from other States. After sending the search intimation to the learned Judicial Magistrate concerned, the second respondent/defacto complainant had conducted search along with police parties in the presence of two



independent witnesses at ISRAA SPA, Door No.83, DSP Nagar Main Road, Madurai. During the search, the second respondent had found that the therapists were not in uniform and uneducational qualification, the CCTV cameras were not functioning, the Massage rooms were in closed condition and there is no proper entries in the customer register and on enquiry, the first accused, who is one of the Directors of the company, had confessed about the illegal running of prostitution by A1, A2 and A9 by using the ladies/A5 to A8 from other States and A3 and A4 were arrested and being examined in the said Spa. Based on the confession of A1, the second respondent police arrested these petitioners along with other accused and seized many properties in the spa i.e., 2 numbers of Verifone Swiping Machine, 8 mobile phones, Ray sharp DVR, LG Monitor, Panasonic Landline Phone, and its charger, a Vespa motorcycle bearing registration No.TN 59 E 4747 and some other notebooks including a sum of Rs.3000/- as cash.

4.The learned counsel appearing for the petitioner would submit that the registration of the case in the further proceedings are in abuse of process of law. He would further submit that as per Section 15 (1) of the Immoral Traffic (Prevention) Act, 1956, the respondent does not have any power to enter upon any premises and cause a search without warrant and it can be done only after satisfying the followings:

(i) he should have reasonable grounds for believing that an offence punishable under this Act has been or is being committed.

(ii) he must believe that such an offence is committed in respect of a person living in the premises.

(iii) he should believe that the search of the premises with warrant cannot be made without undue delay.

(iv) he must record the grounds of his belief before entering the premises.

5.He would further submit that expression "Special Police Officer" defined in section 2(i) of the Act, is to mean 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. Similarly, the expression "trafficking Police Officer" defined in Section 2(j) is to mean a Police Officer appointed by the Central Government under Section 13(4). Whereas, the respondent police are not either the Special Police Officer or under the State Government or Central Government. Further, the same second respondent had received information and registered the case and he is also the Investigating Officer. He would further submit that excepting that the petitioners are customers there is no other allegations against them.

6.In support of his contention, the counsel for the petitioner relies on the judgment of this Court in CrI.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 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 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."

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."

7. The learned Additional Public Prosecutor appearing for the respondent police would submit that the first respondent police had complied with the mandatory provisions under the Act.

8. This Court has carefully considered the submission made on either side and also perused the materials available on records.

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.

10. In view of the above, this Court is of the considered opinion that the continuation of the investigation against the petitioners is an abuse of process of law and in the interest of justice, the same requires the interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

11. Accordingly, these criminal original petitions are allowed and the FIR in Crime No.953 of 2019, on the file of the first respondent is hereby quashed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar (CS)



To:

1. The Inspector of Police,
S.S.Colony Police Station,
Madurai.
2. The Sub Inspector of Police,
S.S.Colony Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.J.WILLIAM CHRISTOPHER, Advocate (SR-5460[F] & 5461

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SMA/13/03/2020/6P/6C