

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.02.2021
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
Crl. OP No.30001 of 2019
and Crl. MP Nos.16196 and 16197 of 2019

Balu @ Balasubramanian ... Petitioner/ Accused No.5
vs.

The State rep. By
The Inspector of Police,
Reddiyarpalayam Police Station,
Puducherry District.
(Crime No.126/2018) Respondent /
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in S.T.C.No.888 of 2019 on the file of the Judicial Magistrate No.III, Puducherry and quash the same as far as the petitioners are concerned.

For Petitioner : Mr.V.Sakkarapani
For Respondents: Mr.V.Balamurugane
Addl. Public Prosecutor (Pondy)

ORDER

This petition has been filed seeking to quash the proceedings in STC No. 888 of 2019 on the file of the Judicial Magistrate No.III, Puducherry.

2. The respondent Police has filed a Final Report before the Court below against five accused persons for an offence under Sections 4(2)(b)(c), 5(1)(d), 6(1)(b), & 3(2)(a) (b) of the Immoral Traffic (Prevention) Act, 1956 r/w 34 IPC.

3. The case of the prosecution is that based on a secret information, the respondent Police came to know that the subject property is being used as a brothel house and A1, who is said to be a habitual offender had engaged the victim girls in prostitution.

4. The petitioner has been arrayed as A5 on the ground that he is the lessee of the subject property in which business was conducted in the name of JP Residency.

5. The learned counsel appearing for the petitioner submitted that there are absolutely no materials against the petitioner and the respondent Police have not followed the mandatory procedure laid under Section 15 of the Immoral Traffic (Prevention) Act, 1956. The learned counsel in order to substantiate his submissions, relied upon the judgment of this Court in *Kadek Dwi Ani Rasmini and Ors. Vs. Respondent: K. Natarajan and Ors.*, reported in 2019 (1) LW crl 94.

6. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the petitioner is the lessee of the subject property where the prostitution had taken place and it was done with the knowledge of the petitioner and therefore, based on the materials collected by the respondent Police, a prima facie case has been made out against the petitioner and there are absolutely no grounds to interfere with the proceedings.

7. This Court has carefully considered the submissions made by the learned counsel on either side and the materials available on record.

8. The main ground of attack in the present petition is that the respondent police did not follow the mandatory requirements under Section 15 of the Immoral Traffic (Prevention) Act, 1956. For proper appreciation, the relevant portions in the judgment referred by the learned counsel appearing for the petitioner are extracted hereunder:

28. A careful look at the provisions of Section 15 would show that a Special Police Officer or a Trafficking Police Officer can enter upon any premises and cause a search without warrant, only after satisfying the following:?

(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; and

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

29. The expression "Special Police Officer" is defined in Section 2(i) of the Act, 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" is defined in Section 2(j) to mean a Police Officer appointed by the Central Government under Section 13(4). I do not know and I have not come across any such Trafficking Police Officer appointed by the Central Government in terms of Section 13(4), at least in the State of Tamil Nadu.

30. Under Sub section (2) of Section 15, the Special Police Officer or the Trafficking Police Officer should also call upon two or more respectable inhabitants, at least one of whom should be a woman of the locality in which the place to be searched is situate, to attend and witness the search. For the purpose of enforcing the attendance of such respectable inhabitants, the Police Officer is obliged to issue an order in writing to them. If the person, who is called upon to attend and witness the search, refuses or neglects to comply with the notice, despite an order in writing being delivered to him, he is liable to be punished for an offence under Section 187 of the IPC, by virtue of Sub section (3) of Section 15. An immunity is granted under Sub section (6) of Section 15 to persons taking part in or attending and witnessing a search, from any civil or criminal proceedings in respect of anything lawfully done in connection with the search.

31. The Special Police Officer or the Trafficking Police Officer, who makes a search, should be accompanied by at least two women Police Officers. If any woman or girl is removed under Sub section (4) from the premises of search, she could be interrogated only by the woman Police Officer.

32. Day in and day out, newspapers compete with each other in publishing reports along with photographs of girls, whenever any search is carried out under Section 15 of the Act and any woman is removed from a place. The website of the National Crime Records Bureau shows that a total of about 2,44,270 incidents of crime against women were reported in the whole country during the year 2012. Out of them, about 2563 constitute cases under the Immoral Traffic (Prevention) Act, 1956. Interestingly, 19.5% of such cases (about 500 cases out of those 2563 cases) were reported only in Tamil Nadu. This can be taken either as an indication that incidents of crime under the said Act is on the increase in Tamil Nadu or as an indication of the role played by the Police in the State of Tamil Nadu in taking the crimes under this Act more seriously than what their counterparts in the other States do.

33. Unfortunately, no accountability is fixed on the police to see whether all the requirements of Section 15 are complied with or not. No one calls upon the Special Police Officer or the Trafficking Police Officer (i) to produce records to show whether he has minuted the grounds of his belief that an offence punishable under the Act is committed or has been committed in respect of a person living in any premises, (ii) to produce records to show his subjective satisfaction that the search of the premises with warrant cannot be made without undue delay, (iii) to produce records to show whether two respectable inhabitants of the locality attended and witnessed the search, (iv) to show whether persons removed from such premises were subjected to medical examination and produced before the appropriate Magistrate immediately, and (v) to produce proof to show that two women Police Officers accompanied them and the interrogation of any woman was done only by them.

34. Many times, even persons who are booked under the provisions of this Act, do not appear to challenge the procedure adopted. This is perhaps due to the fact that in most of the cases, the Police find it convenient to book a person only for an offence under Section 8, which is punishable on first conviction, either with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 5,000/-. Therefore, it appears that people choose to plead guilty and pay the fine even on the first occasion and get off, instead of going through the mill, by facing the prosecution and challenging the procedure followed by the Police. The remedy is seen as worse than the disease.

36. Therefore, the only presumption that I can draw is that as against the writ petitioners herein, the Police did not carry out a search by following all the steps prescribed in Section 15. When the mandate of the law is so clear in Section 15, the respondents cannot carry out a search dehors Section 15.

37. The conclusion that we can arrive at, on the basis of the above discussion, is two fold. If the Police carry out a search of the premises where the petitioners are carrying on business activities, after following all the steps prescribed in Section 15, the petitioners cannot come under Article 226, but may have to seek redressal somewhere else. But, if the respondents are in the habit of carrying out searches in a manner not prescribed by Section 15, then the same actually tantamount to an unlawful interference with the fundamental right of the petitioners to carry on any business or profession which is not declared as unlawful by any legislation."

9. In the present case, the inspection was not carried out by the Special Police officer or the Trafficking Police Officer and the Officer who carried out the inspection, was not an authorized Officer under Section 15 of the Act.

10. This Court has time and again held that if the search and inspection is not carried out by following the procedure prescribed under Section 15 of the Act, the entire proceedings becomes illegal in the eye of law. This is yet another case where the respondent Police failed to follow the mandatory procedure under Section 15 of the Act.

11. This ground by itself will vitiate the proceedings and therefore, this Court has no hesitation to interfere with the proceedings in STC No. 888 of 2019 on the file of the Judicial Magistrate No.III, Puducherry and the same is hereby quashed, insofar as the petitioner is concerned and this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

jv

To

1. The Judicial Magistrate No.III,
Puducherry.

2.The Inspector of Police,
Reddiarpalayam Police Station,
Puducherry District.

3. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

सत्यमेव जयते

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