

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29/6/2022

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl. O.P. No.6563 of 2022

a n d

Crl.M.P.No.3709 of 2022

Balaji

...Petitioner / Accused No.4

Vs

1. State
rep. By The Special Sub-Inspector of Police
Anti-Vice Squad - 2 Police Station
CCB, Chennai.

2. Mr.Theertham
The Special Sub-Inspector of Police
Anti-Vide Squad - 2 Police Station
Chintadripet
Chennai.

...Respondents / Investigation Officer /
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records and quash the FIR in Crime
No.13 of 2021 pending on the file of the first respondent.

For Petitioner ... Mr.M.Mohammed Riyaz

For Respondent ... Mr.A.Gokulakrishnan
Additional Public Prosecutor
for R.1.

O R D E R

This Criminal Original Petition has been filed to quash the
FIR in Crime No.13 of 2021 pending on the file of the first
respondent, for the offences punishable under Sections 3 (2)
(a), 4 (1), 5 (1) (a), 5 (1) (d) of Immoral Traffic (Prevention)
Act and Section 370 A (2) of the Indian Penal Code.

2. Heard Mr.M.Mohammed Riyaz, learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for the respondents.

3. The case of the prosecution is that on 1/10/2021, a person by name Rajesh, who had approached the defacto complainant, who is the SSI of the first respondent Police, and informed that his owner Kulotungan is running a Massage Centre and on payment of Rs.2,500/- he can have an affair with the girls.

4. Accordingly, the defacto complainant visited the said massage centre and lodged a complaint with the first respondent Police and accordingly, the First Information Report was registered in Crime No.13 of 2021 for the offences punishable under Sections 3 (1) (a), 4 (1) and 5 (1) (a) of Immoral Traffic (Prevention) Act was registered.

5. The allegation against the petitioner is that when the police party raided a massage centre, the petitioner was also present along with the sex workers and he was apprehended and arrayed as A.4.

6. Learned counsel appearing for the petitioner submitted that even if the entire allegations are taken together, it would not attract any offence. He further submitted that doing sex work is not illegal and only running a brothel is illegal.

7. Learned counsel appearing for the petitioner further submitted that the sex workers are engaged in prostitution on their own volition and not due to any inducement, force or coercion and, therefore, such acts are not liable for prosecution under Section 370 of the Indian Penal Code.

8. Even a bare perusal of the FIR does not reveal the presence of the petitioner at the said place. Further, the petitioner is also not shown as an accused in the FIR. However, only in the alteration report, the petitioner is shown as A-4. Even if the entire report is taken at its face value, the said report does not show any offence committed by the petitioner, except for the alleged presence of the petitioner at the said place. Further, there is no material to show that the petitioner was involved in any sexual act at the said place and that the persons, who have been rescued from the said place have made any allegation against any of the individuals, much less the petitioner.

9. In this backdrop, the decision of the Hon'ble Apex Court in BUDHADEV KARMASKAR Vs. THE STATE OF WEST BENGAL & ORS (2022 Live Law (SC) 525), assumes significance, wherein, the Hon'ble

Apex Court has held that whenever any brothel is raided, sex workers should not be arrested or penalised or harassed or victimised and it is only the running of the brothel, which is unlawful.

10. In the case on hand, merely because the petitioner was in the place, which is alleged by the respondents to be a brothel being run by some person, the petitioner cannot be fastened with any penal consequence and further, the act of the petitioner also cannot be said to be an act of pressurising the sex workers to commit acts, which they were not interested. From the aforesaid decision, any sex worker, being an adult and indulging in sexual act with his/her own consent, the police authorities should refrain from taking action against such individuals. From the facts, as is evident from the FIR and the alteration report, there is no whisper about any coercion on the sex workers to commit the act, more so from the petitioner. That being the case, the petitioner not being alleged to be a person coercing the sex worker to commit the sexual act, continuing the First Information Report against this petitioner is nothing but a futile exercise and would serve no purpose.

11. For the reasons aforesaid, this Criminal Original Petition is allowed and Crime No.13 of 2021, pending on the file of the Special Sub-Inspector of Police, Anti-Vice Squad - 2 Police Station, CCB, Chennai insofar as the petitioner, who is arrayed as A-4 is quashed. Consequently, connected CrI.M.P.No.3709 of 2022 is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Special Sub-Inspector of Police
Anti-Vice Squad - 2 Police Station
CCB, Chennai.
2. The Public Prosecutor,
High Court, Madras - 104.

+1cc to Mr.M.Mohammed Riyaz, Advocate, S.R.No.40869

CrI. O.P. No.6563 of 2022

AJB[co]
NSK/15/07/2022