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Crl.O.P.No.15963 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2022

DELIVERED ON : .07.2022

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.15963 of 2020

and

Crl.M.P.No.6111 of 2020

1.A.Thanajayan

2.Benz Saravanan.C

... Petitioners

Vs.

1.The Inspector of Police,
V4 Rajamangalam Police Station,
Chennai.

2.Vijayakumar
S/o not known,
Police head constable 25083,
V4 Rajamangalam Police Station,
Chennai.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in the FIR Crime No.969 of 2020 on the file of the first respondent police and quash the same.

For Petitioners : Mr.C.Kanagaraj
For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)



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For R2 : No appearance
ORDER

This petition has been filed to quash the FIR in Crime No.969 of 2020 on the file of the first respondent police, for the offences under Sections 3(2)(a),4(1),5(1)(a) of the Immoral Traffic (Prevention) Act r/w Section 4(1)(k) of the Tamil Nadu Prohibition Act and Sections 188, 269 of IPC as against the petitioners.

2. The case of the prosecution is that when the respondent police were on regular check up, they found that a Recreation club was running without any valid permission. It is also alleged that the petitioners and other accused are the owners of the club and they were doing prostitution business. Hence, the complaint.

3. The learned counsel appearing for the petitioners would submit that there are totally 9 accused in which the petitioners are arrayed as A1 and A2. They are running a Recreation Club on their own in the name of Kadal Pura Recreation Club, after obtaining necessary permission and proper license from the Prohibition and Excise



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Department. It is also periodically renewed by the department concerned.

He would further submit that the provisions of the Act must be strictly followed, cogent and with the convincing material must be placed before this Court that the petitioners were involved in the offences. While being so, the second respondent ought not to have arrayed the petitioners as the accused without any specific allegation. The premises was let out by the landlord Mrs.P.Sridevi to one Ramamohan Durai for carrying out the business of bar, restaurant and entertainment events on monthly rental basis. The first petitioner entered into the business agreement with the said Ramamohan Durai on 27.03.2019. Therefore, the role played by the petitioners is that they handed over the premises for the purposes of skill development and to keep fit health and mind, away from day today human problems. That apart, the petitioners were not present at the time of search and they are no way connected with the activities of the recreation club. Only on the false information given by the competitor, the present impugned FIR has been registered as against the petitioners.



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4. The first respondent is not the competent person to register the case under the Immoral Traffic (Prevention) Act [herein after called as ITP Act]. As per the provision under Section 13 of the ITP Act has not been complied with by the first respondent who had conducted the raid and may arrest of the accused persons is not a Special Police Officer as specified under the Act. Therefore, the first respondent has no jurisdiction to register the FIR under the ITP Act. He further submitted that the first respondent failed to follow the procedure laid down under Section 15 of the ITP Act.

5. In support of his contentions, he relied upon several Judgments in which this Court held in Crl.O.P.No.30001 of 2019 in respect of the provisions under Section 15 of the ITP Act. By relying upon the judgment of this Court reported in **2019 (1) LW Crl 94** in the case of **Kadek Dwi Ani Rasmini and Ors. Vs. K.Natarajan and Ors.**, held that the inspection was not carried out by the Special Police Officer or the Trafficking Police Officer or the Officer who carried out the inspection, was not an authorized Officer under Section 15 of the Act.



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Further, held that if the search and inspection is not carried out by following the procedure prescribed under Section 15 of the Act, the entire proceeding is illegal in the eye of law. The Police officer failed to follow the mandatory procedure as contemplated under Section 15 of the ITP Act.

6. This Court held in Crl.O.P.No.10334 of 2022 in the case of ***Udhaya Kumar Vs The State rep. By The Inspector of Police, Anti-Vice Squad-II Police Station, Chennai CCB and another*** on relying upon the Judgment of the Hon'ble Supreme Court of India reported in ***2022 Live Law (SC) 525*** in the case of ***Budhadev Karmaskar Vs. The State of West Bengal & Ors***, held that whenever any brothel house 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.

7. Per contra, the learned Government Advocate (Crl. Side) submitted that when the first respondent went to the scene of occurrence found that the accused persons escaped from occurrence place. There



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were only 12 victims in the place of occurrence and they were rescued and safely handed over to the Government home. Thereafter, they were produced before the Jurisdictional Magistrate Court and sent for medical examination. Insofar as the petitioners are concerned, they obtained Anticipatory Bail and investigation is pending. The first respondent have examined 12 victims and recorded their statements. Insofar as the accused 6, 8 and 9 are concerned, they are still absconding and yet to complete the investigation. He further submitted that only FIR has to be investigated in depth to unearth the truth. Therefore, the FIR cannot be quashed on its threshold and prayed for dismissal of this petition.

8. Heard Mr.C.Kanagaraj, learned counsel appearing for the petitioners, Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the first respondent.

9. The learned counsel for the petitioners had mainly raised two grounds:

(i) the first respondent is not a competent authority to conduct



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search and arrest of the accused persons as contemplated under Section 13 of the ITP Act.

(ii) the first respondent failed to comply the provisions under Section 15 of the ITP Act while making search.

10. Both grounds raised by the petitioners have now been settled by this Court in Crl.O.P.No.922 of 2021 dated 29.04.2022 in the case of ***Hema Jwaalini and Ors. Vs. The Commissioner of Police, Chennai and Ors.*** The first ground raised by the petitioners is that the provision under Section 13 of ITP Act has not been followed by the first respondent.

11. The learned counsel for the petitioners also relied upon the judgment reported in ***AIR 1962 SC 63***, in the case of ***Delhi Administration Vs. Ram Singh***. The ITP Act is enacted to inhibit or abolish the commercialized trafficking of women and girls for the purpose of prostitution as an organised means of living. To meet out the first ground, it is relevant to extract under Section 13 of the ITP Act as



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follows:

“13.Special police officer and advisory body.—

(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally: Provided that no such power shall be conferred on—

(a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;

(b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.]

(3) For the efficient discharge of his functions in relation to offences under this Act—

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and

(b) the State Government may associate with the special police officer a non-official advisory body



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consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

12. The Hon'ble Supreme Court of India held in the above case of ***Delhi Administration Vs. Ram Singh*** that whether a police officer, who is neither a special police officer under the Suppression of Immoral Traffic in Women and Girls Act, 1956 nor a police officer subordinate to a special police officer, can validly investigate the offences under the Act. Whereas, the ground raised by the petitioners is that non compliance of the provisions under Section 13 of the Act.



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13. The Government of Tamil Nadu by the G.O.Ms.No.618, Social Welfare Department, dated 13.04.1987, with regards to exercise of powers conferred under Section 13 of the Suppression of immoral Traffic in Women and Girls Act, 1956 passed order and the relevant portion which as follows:

“In exercise of the powers conferred by section 13 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956) and in supersession of the orders issued with G.O.Ms.No.2527, Home, dated the 6th September 1958 and G.O.Ms.No.2014, Home, dated the 29th June 1964, the Governor of Tamil Nadu hereby appoints every Police Officer not below the rank of an Inspector of Police to be the special police officer for dealing with offences under the said Act in respect of the areas within his jurisdiction and also appoints every Police Officer (including Women Police Officers wherever necessary) not below the rank of a Sub-Inspector of Police as subordinate police officer to assist the special police officer concerned.”

14. In pursuant to the Government Order the Commissioner of Police, Chennai by the Memorandum dated 10.11.2017 appointed all the officers and above the rank of the Inspector of Police as Special Police Officer and the relevant portion which reads as follows:

“The Government order under reference



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1st cited issued in exercise of the powers conferred under Section 13 of the Immoral Traffic (Prevention) Act, 1956 reads as below:

“the Governor of Tamil Nadu hereby appoints every Police Officer not below the rank of an Inspector of Police to be the Special Police Officer for dealing with offences under the said Act in respect of the areas within his jurisdiction and also appoints every Police Officer (including Women Police Officers wherever necessary) not below the rank of a Sub-Inspector of Police as Subordinate Police Officers to assist the Special Police Officer concerned”.

2)As per the above order, all officers of and above the rank of Inspectors of Police are empowered to deal with the offences under the Immoral Traffic (Prevention) Act, 1956 in respect of the areas within their jurisdiction and therefore they are vested with the powers of search, arrest, investigation etc., under various provisions of the said Act.

3) Hence all officers concerned are instructed to take not of the above said Government Order and in light of the same, they will hence forth deal with the offences under the Immoral Traffic (Prevention) Act, 1956.”

Thus it is clear that the first respondent who has registered the FIR, the Special Officer who empower to deal with the offences under the ITP Act. Therefore, there is no violation of the provision under Section 13



15. The second ground raised by the petitioners is that there is procedural irregularity on the part of the first respondent in complying with the provisions of the Section 15(1) and (2) of the ITP Act, while conducting search. In this regard, the learned counsel for the petitioners relied upon the judgment in *Crl.O.P.No.30001 of 2019* reported in the case of *Balu @ Balasubramanian Vs. The State. Rep. By The Inspector of Police, Reddiyarpalayam Police Station, Puducherry District*. However, the decision in *Bai Radha Vs. State of Gujarat* reported in *1969 (1) SCC 43* was not brought to the notice of this Court. Subsequently, this Court after considering the *Bai Radha Vs. State of Gujarat* case in *Crl.O.P.No.922 of 2021* held that non-observance of the provisions of Section 15 of the Immoral Traffic (Prevention) Act would not vitiate the entire criminal proceedings and such provisions are only directory and not mandatory. Further held that in every case, on the



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touchstone of Section 15(2) of the Immoral Traffic (Prevention) Act, 1956, it has to be determined by the Courts whether it was efficacious for the officers to call two persons from the locality or if due to urgency or emergency, the said provision could not be complied with, it has to depend on the facts and circumstances and mere violation of Section 15(2) of Immoral Traffic (Prevention) Act will not vitiate the proceedings, as it will be in the realm of appreciation of evidence in each and every case.

16. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in, to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

17. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in *Crl.A.No.255 of 2019* dated **12.02.2019** in the case of *Sau. Kamal Shivaji Pokarnekhar vs. the State*



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of Maharashtra & ors., which reads as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. *Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."*

18. In view of the above discussion, this Court is not inclined to quash the proceedings in Crime No.969 of 2020 on the file of the first respondent police. However, the first respondent is directed to complete the investigation and file a final report, within the period of twelve weeks from the date of receipt of a copy of this order.

19. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous petition is closed.

.07.2022

Internet : Yes / No



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Index : Yes / No
Speaking / Non Speaking order
cda/mn

G.K.ILANTHIRAIYAN, J.

mn

To

- 1.The Inspector of Police,
V4 Rajamangalam Police Station,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

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and
Crl.M.P.No.6111 of 2020



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