



WEB COPY



Crl.O.P.No.22460 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.22460 of 2022

and

Crl.M.P.No.14435 of 2022

1. Sairam Kumar
2. Naveen Kumar

.... Petitioners

Vs

1. The State Rep. by
Inspector of Police,
AVS II Police Station,
Chindatripet, Chennai.

2. Jayaprakash
Head Constable,
AVS II Police Station,
Chindatripet, Chennai.

.... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the FIR in Crime No.9 of 2021 dated 03.09.2021 on the file of the 1st respondent.

For Petitioners : Mr.V.T.Narendiran

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor



Crl.O.P.No.22460 of 2022

ORDER

WEB COPY

This Criminal Original Petition has been filed to call for the records and quash the FIR in Crime No.9 of 2021 dated 03.09.2021 pending on the file of the 1st respondent police, for the offence punishable under Sections 3(2)a, 4(1), 5(1)a, 5(d) of ITP Act and 370(A)(2) of IPC.

2. Heard, Mr.V.T.Narendiran, learned counsel appearing for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the 1st respondent.

3. The allegation against the petitioner is that when the police party headed by the Inspector of Police raided a massage centre, the petitioners were also present along with the sex workers and they were apprehended and arrayed as A2 & A3.

4. The learned counsel appearing for the petitioners 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.



Crl.O.P.No.22460 of 2022

5. The learned counsel appearing for the petitioners further submitted that the sex workers are engaged in prosecution on their own violation and not due to any inducement, force or coercion and, therefore, such acts are not liable for prosecution under Section 370 of IPC.

6. The learned Additional Public Prosecutor submitted that under the pretext of massage centre, a brothel was run by A1.

7. The present petition is filed by A2 & A3 and not by A1. The very report and alteration report filed by the police would indicate that the petitioners were present while sex workers were in the said massage centre. However, even a bare perusal of the FIR does not reveal the presence of the petitioners at the said place. Further, the petitioners are also not shown as an accused in the FIR. However, only in the alteration report, the petitioners are shown as A2 & A3. Even if the entire report is taken at its face value, the said report does not shown any offence committed by the petitioners, except for the alleged presence of the petitioners at the said place. Further, there is no material to show that the petitioners were involved in any sexual act at the said place and that the persons who have been rescued from the said place have made any



Crl.O.P.No.22460 of 2022

allegation against any of the individuals, much less the petitioners.

WEB COPY

8. 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.

9. In the case on hand, merely because the petitioners were in the place, which is alleged by the respondent to be a brothel being run by some person, the petitioners cannot be fastened with any penal consequence and further, the act of the petitioners 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 petitioners. That being the case, the petitioners not



Crl.O.P.No.22460 of 2022

being alleged to be a person coercing the sex worker to commit the sexual act, continuing the First Information Report against these petitioners are nothing but a futile exercise and would serve no purpose.

10. For the reasons aforesaid, this Criminal Original Petition is allowed and Crime No.9 of 2021, pending on the file of the Inspector of Police, AVS II Police Station, insofar as the petitioners, who are arrayed as A2 & A3 are quashed. Consequently, connected miscellaneous petition is closed.

19.09.2022

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

G.K.ILANTHIRAIYAN. J.

Lpp

To

1. The Inspector of Police,
AVS II Police Station,
Chindatripet, Chennai.

2. The Public Prosecutor
Madras High Court.



WEB COPY



Crl.O.P.No.22460 of 2022

Crl.O.P.No.22460 of 2022
and
Crl.M.P.No.14435 of 2022

19.09.2022