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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.23247 OF 2021

AND

CRL.M.P.NO.12744 OF 2021

G.Arunkumar

... Petitioner

.Vs.

1. The State Rep. by
The Inspector of Police,
Annadanapatty Police Station,
Salem City.

2. B.Kumar

... Respondents

PRAYER:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in Crime No.493 of 2019 dated 30.08.2019 on the file of the Inspector of Police, Annadanapatty Police Station, Salem and quash the same.

For Petitioner : Mr.N.Vijaya Basker

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

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.493 of 2019, on the file of the 1st respondent Police.

2. The case of the prosecution is that the 2nd respondent, Inspector of Police attached to the 1st respondent Police received an information that prostitution was running in a house situated at No.322, Trichy Main Road, Dadagapatty, Salem, based on that information, the 2nd respondent sent a requisition for



conducting search and due to not having sufficient time to get orders from the learned Additional Mahila Judge, Salem, the 2nd respondent along with Police team went to the house of A1, found that the accused persons are all inside the house and on enquiry made with one of the lady namely Mahalakshmi, who voluntarily gave a confession statement disclosing about A1 and A2 with fancy words lured her to prostitute, so that she can get more money, based on their compulsion, she had physically compromised with A3.. Hence, the 1st respondent Police registered an FIR in Crime No.493 of 2019, for offence under Sections 3(1), 4(1), 5(1) and 6(1)(a) of the Immoral Traffic (Prevention) Act, 1956 against the petitioner/A3 and A1 and A2.

3. The learned counsel for the petitioner submitted that the petitioner does not have contact with A1 and A2 at any point of time and he visited his friend one Vicky who is staying in the 2nd floor of the said building and had not committed any such offence as alleged by the 1st respondent Police. He further submitted that the 2nd respondent registered a false case against the petitioner for the offences punishable under Sections 3(1), 4(1), 5(1) and 6(1)(a) of Immoral Traffic (Prevention) Act, 1956. The said offences will not get attracted against the petitioner and he cannot be punished for the aforesaid offences. The 2nd respondent himself being a defacto complainant, had registered the above case and acted as Investigating Officer. Hence, prejudice would be caused.

4. The learned counsel further submitted that the 2nd respondent violated Section 15 of the Immoral Traffic Act, by making search without warrant and without following the procedure as contemplated in the Act. The petitioner hails from a respectable family, due to the registration of FIR, he is facing lot of problems in his family and further, he lost his job. Hence, he prayed for quashing of the FIR against the petitioner.

5. In support of his submissions, the learned counsel for the petitioner produced the identity proof, copy of his degree certificate, marriage registration certificate and other particulars.

6. The learned Additional Public Prosecutor appearing for the 1st respondent filed counter and submitted that the 2nd respondent, Inspector of Police attached to the 1st respondent Police received information that prostitution was running in a house situated at No.322, Trichy Main Road, Dadagapatty, Salem, based on that information, the 2nd respondent along with Police team went to the house of A1, found that the accused persons inside the house, on enquiry made with one of the lady namely Mahalakshmi, who voluntarily gave statement disclosing about A1



and A2 involved her in prostitution business on luring her that, she will get more money, based on that such projection, she had compromised with A3, the petitioner. Hence, the 1st respondent Police registered an FIR in Crime No.493 of 2019, for offence under Sections 3(1), 4(1), 5(1) and 6(1)(a) of the Immoral Traffic (Prevention) Act, 1956 against the petitioner/A3 and A1 and A2. He further submitted that the FIR is only of the year 2021 and the investigation is going on. Hence, he prayed for dismissal of the Quash Petition.

7. This Court considered the rival submissions and perused the materials available on record.

8. The sole ground on which the petitioner herein is arrayed as the accused in the above crime is that he was present at the spot during the raid, indicating that he was a customer who had gone to the brothel house. The provisions of the Immoral Traffic (Prevention) Act, 1956 invoked by the 1st respondent Police do not get attracted against the petitioner on the facts and materials. Further, Section 3 of the ITP Act, 1956 pertains to keeping a brothel or allowing premises to be used as a brothel. Section 4 of the ITP Act, 1956 pertains to punishment for living on the earnings of prostitution. Section 5 of the ITP Act, 1956 refers to procuring, inducing or taking (person) for the sake of prostitution. Section 6 of the ITP Act, 1956 deals about detaining a person in the premises where prostitution is carried out. Section 7 deals with prostitution in or in the vicinity of public places. A person who visits brothel house only as a customer is not covered by any of the above provisions or any other provision of the ITP Act, 1956. The admitted case of the prosecution is that the petitioner/A3 was present when Police came for raid in a brothel home, nothing more.

9. The allegations made against the petitioner and the material collected do not show the commission of any of the offences made against him in the FIR. Hence, the FIR in Crime No.493 of 2019 is liable to be quashed and, is quashed as against the petitioner alone.

10. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Annadanapatty Police Station,
Salem City.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Vijaya Basker, Advocate, S.R.No.5931

CRL.O.P.NO.23247 OF 2021

KSM(CO)
PBS/24/02/2022