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Crl.O.P.No.23611 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.23611 of 2019 and
Crl.M.P.No.12447 of 2019

Mr.Kalimuthu

... Petitioner

/vs/

The Inspector of Police,
D-1, Triplicane Police Station,
Chennai 600 005.
(Crime No.303/2018)

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in Crime No.303 of 2018 on the file of the respondent police dated 12.06.2018 and quash the same in so far as the petitioner is concerned.

For Petitioner

... Mr.V.Parthiban for
Mr.M.Gowthama Budha

For Respondent

... Mr.A.Gopinath,
Govt. Advocate (Crl.Side)



Crl.O.P.No.23611 of 2019

ORDER

This Criminal Original Petition has been filed to call for the records in Crime No.303 of 2018 on the file of the respondent police dated 12.06.2018 and quash the same in so far as the petitioner is concerned.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

3. The petitioner is the first accused. An FIR has been registered on the special report given by one Kumaresan, Sub-Inspector of Police, Triplicane. The police came to know that the Pals Restaurant in Anna Salai where the petitioner is the Manager, is conducting certain programmes which spoil the societal values. When he inspected the video clippings obtained from the recording of the surveillance camera, he came to know that obscene dances were performed by women and the viewers were seen to be throwing money on them. On these allegations, a case has been registered in FIR No.303 of 2018 for the offences under Sections 294(a), 509, 109, 34, 37 & 40A of IPC.

4. The learned counsel for the petitioner submitted that in the year



2014 itself, the owner of the Pals Restaurant Mr.S.Ramasamy has filed a Writ Petition in W.P.No.328 of 2014 for restraining the police from interfering in the conduct of Indian Cultural Dances by the petitioner in his Restaurant premises; in this regard, an order has been passed in M.P.No.1 of 2014 filed in the Writ Petition; in the said order, it is stated as under in paragraph Nos.12,13 and 14.

“12. It is seen from the counter affidavit filed by the second respondent that there is a clear admission to the effect that hitherto, there had never been any case registered against the petitioner for violation of the licence condition. It is only stated that there are oral complaints received against the petitioner. Even as per the counter affidavit, it was not specified as to whether any enquiry was conducted in to those oral complaints or the second respondent stated as to what was the specific violation complained in those oral complaints. In any view of the matter, these allegations have to be decided finally in the writ petition. In the interregnum period, even as per the decision of this Court in respect of the very same petitioner through the erstwhile licence holder, it has been categorically held that if there is any violation, it will not be a ground for the respondents to



refuse to grant licence to the petitioner. In this case, there is no specific violation of the licence condition pointed out by the respondents. Further, in similar circumstances, in respect of the very same issue, this Court passed orders at the instance of adjacent hoteliers on 20.12.2013 in W.P.No.34648 of 2013 and M.P.No.1 of 2013 mentioned supra, pursuant to which, the licence in favour of the petitioner therein was renewed. The respondents, following the order passed by this Court on 20.12.2013 ought to have renewed the licence in favour of the petitioner, but it was not done so.

13. Having regard to the fact that the application for renewal has been filed by the petitioner on 12.11.2012 with the second respondent and that the show cause notice issued by the second respondent is challenged in the writ petition, following the earlier orders passed by this Court in W.P.No.10029 of 2010 dated 05.05.2010 and the order dated 20.12.2013 in W.P.No.34648 of 2013 and M.P.No.1 of 2013 mentioned supra and the order passed by the Division Bench of this Court in respect of the very same petitioner through its erstwhile licence holder, there will be an interim



injunction as prayed for till the disposal of the writ petition. It is needless to mention that the petitioner shall not conduct any obscene dances in the restaurant and conduct the Indian Cultural Dance Programme with strict discipline, dignity and decency. In the event of any violation of the aforesaid conditions and if the petitioner allows performance of any obscene dances, the second respondent officials are at liberty to take action. It is made clear that this order will not prevent the respondents from taking any action against the petitioner for violation of licence conditions or for any wrong doing.

14. This Miscellaneous Petition is ordered accordingly. Post the writ petition along with W.P.No.34648 of 2013 for final disposal.”

5. Subsequently, a Contempt Petition was filed in Cont.P.No.2058 of 2014 by the petitioner by stating that the respondent police had violated the order of injunction given in his favour and in the said Contempt Petition, an order has been passed on 31.07.2014, on the undertaking given by the respondent police that they have not obstructed the petitioner to run the



Crl.O.P.No.23611 of 2019

restaurant. Subsequently, the petitioner filed another Contempt Petition in Cont.P.No.1446 of 2018 and that has been disposed on 26.06.2018. In the said order, it has been observed that the photograph and other materials produced by the respondent in connection with the dance programme conducted at the petitioner's premises does not show any obscenity or awkwardness degrading the modesty of the dancers and the respondents were advised to follow the earlier direction of this Court. With the above observation, the said Contempt Petition was closed.

6. The learned counsel for the petitioner submitted that the present FIR is also the subject matter of the earlier contempt proceedings and hence it is liable to be quashed.

7. The learned Government Advocate (Crl.Side) submitted that the FIR relates to the subsequent occurrence and this occurrence does not have any relevance to the earlier proceedings taken in the Contempt Petitions. It is further submitted that the petitioner is running the Restaurant without any valid license.



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8. So far as this FIR is concerned, it is on allegation that the petitioner is conducting obscene programmes in the name of dance at his Restaurant. It is needless to state that in the earlier order passed in the Miscellaneous Petition in M.P.No.1 of 2014 in W.P.No.328 of 2014, a condition has been imposed that the petitioner shall not conduct any obscene dances in his Restaurant except Indian Cultural Dance Programmes.

9. It is reliably learnt that W.P.No.328 of 2014, is still pending. By taking advantage of the injunction order granted as early as in the year 2014, the petitioner therein continues to file various Contempt Petitions. But strangely the respondent police have not taken any steps for early listing of the Writ Petition for final hearing and get it disposed.

10. However, it is seen that the FIR pertains to the case of the year 2018 which is the subject matter of the earlier Contempt Petition filed in Cont.P.No.1446 of 2018. In the said Contempt Petition itself, the photographs produced by the respondent police were circulated among the



CrI.O.P.No.23611 of 2019

Members of the Bar including a senior woman counsel and three other women counsels and their opinion was obtained. After perusing the materials, those neutral persons have stated that the materials did not contain any obscenity.

11. This FIR was not the one which was registered subsequent to the above Contempt Proceedings. Since the FIR was the subject matter of the earlier Contempt Petitions, in which it has been clearly observed that the materials produced in this regard did not contain any obscenity, there is no necessity for keeping the FIR pending unnecessarily. In view of the above stated reasons, I feel the FIR should be quashed in so far the petitioner is concerned. It is needless to add that if the Restaurant is being conducted without proper license, the concerned authorities are not precluded from taking appropriate action in accordance with law.

12. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.303 of 2018 on the file of the respondent police is quashed in so far as this petitioner is concerned. However, the investigation



CrI.O.P.No.23611 of 2019

shall go on as against the other accused. Consequently, connected

miscellaneous petition is closed.

23.12.2022

Index: Yes/No

Internet: Yes/No

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To

1.The Inspector of Police,
D-1, Triplicane Police Station,
Chennai 600 005.

2.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA ,J.

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