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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.02.2022

PRONOUNCED ON : 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.133 of 2022

and

Crl.M.P. (MD) .Nos.91 & 93 of 2022

Arun

... Petitioner/Accused No.3

Vs

1.State represented by

The Inspector of Police,
Ganesh Nagar Police Station,
Pudukottai District.
(Crime No.823 of 2020)

... 1st Respondent/Complainant

2.Chandru

... 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the proceeding in S.T.C.No.498 of 2021 on the file of the learned Judicial Magistrate No.1, Pudukottai and quash the same as illegal as against the petitioner.

For Petitioner : Mr.V.Selvakumar
For R1 : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.498 of 2021 on the file of the Judicial Magistrate No.1, Pudukkottai.

2.The petitioner is figuring as 3rd accused. The Sub Inspector of Police attached to the first respondent police station registered Crime No.823 of 2020 on 05.10.2020 for the offences under Sections 3 (2)(a), 4(1), 4(2)(c) of the Immoral Traffic (Prevention) Act, 1956 and 270 of IPC. Investigation was conducted and final report was filed and cognizance of the offences was also taken. To quash the same, this Criminal Original Petition has been filed.

3.The learned counsel appearing for the petitioner relying on the earlier orders of this Court submitted that since the search and arrest was done by an officer who was not a special police officer within the meaning of Section 13 of the Immoral Traffic (Prevention) Act, 1956, the entire prosecution has to be quashed.



4.No doubt, it is true that a learned Judge of this Court, vide order dated 10.02.2020 in Crl.O.P.(MD)Nos.16310 & 17442 of 2019 held as follows:-

"6.In support of his contention, the counsel for the petitioner relies on the judgment of this Court in Crl.O.P.No.15770 of 2019 dated 05.11.2019, wherein it has been held as follows:

"3. In the case on hand, the respondent neither being a special Police Officer nor a trafficking police officer authority to arrest or investigate the case. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of Mumtaj @ Behri Vs. The State (Government of NCT Delhi) reported in (2003 Cri.L.J. 533, wherein, it has been held that the entire proceedings conducted by the Sub Inspector of Police in a case of involving Immoral Trafficking (Prevention) Act, who was not appointed as Special Police Officer was held to be illegal. It is relevant to note that the decision of the Hon'ble High Court of Kerala, in the matter of Thomas Vs. State of Kerala, which is held as follows:-

" 17. In this regard it would be relevant to note here that in line with the above decision of the Hon'ble Apex Court, the Hon'ble Court of Kerala in the matter of **Thomas Vs State of Kerala through Sub Inspector**, vide para 4 has held that As held by the Hon'ble Apex Court in **Delhi Administration Vs. Ram Singh (1962 SC 63)**, the expression police duties will include all the functions of the police in connection with the purpose of the Act and in the special context of the Act, they will include detection, prevention and investigation of offences and the other duties which have been specifically imposed on them under the Act. Therefore, it is only the Special officer who is authorised to arrest and investigate the case under the Act, Crmc 3533/09 subject to the provisions of Section 14. Proviso to Section 14 provides that arrest without warrant can only be made by the Special Police Officer under his direction or guidance subject to his prior approval....

5.Therefore, when the arrest of the petitioner in this case is by a Sub Inspector, allegedly authorized by the Commissioner of Police, the Special Police Officer, and the authorization admittedly does not contain the name of the petitioner or the offence for which petitioner is to be arrested, it cannot be treated as an authorization as provided Crmc 3533/09 under Section 14 of the Act. If that be so, arrest and detention of the petitioner is illegal.

6.This Court in Sinu Sainudheen's case considered the



mandatory provisions of the Act and held that violation of the mandatory provision would lead to unsuccessful prosecution and such prosecution would only be an abuse process of Court which warrants quashing the proceedings under Section 482 of Code of Criminal Procedure.

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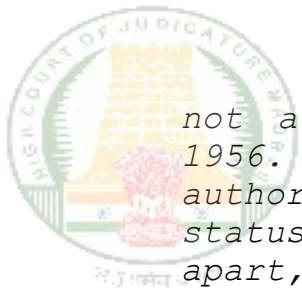
18. Again the scope of search and seizure to be done under the ITP Act, 1956 and the result of non-adherence of such procedure is further dealt with by the Hon'ble High Court of Jharkhand reported in 2008 (2) JCR 153 **Rehan Ahmad @ Mojahid Rehan Ahmad @ Majid Rehan Vs. State of Jharkhand**. The relevant portion is extracted hereunder:

It is a matter surprise that the Investigating Agency including the prosecution over looked the provisions of Special Act in respect of competency of a person to institute a case and to file final form under Section 173, Cr.P.C., after investigation. Admittedly, Shri Gajanand Singh S.I of police was not a Special Police Officer under Section 15 of the Immoral Traffic (Prevention) Act, 1956 to make search and seizure of the vehicle. Similarly, Shri B.B.Sharma. Sub-Inspector of Police below the rank of Inspector was not a Special Police Officer under Section 13 of the Special Act to submit final form. Therefore, the entire criminal proceeding of the petitioners suffers from material irregularity and illegality.

8. I have examined the provisions of law carefully and I find substance in the arguments advanced on behalf of the petitioners that the investigation of the instant case, under the Special Act, was done by the Sub-Inspector of Police and not by a Special Police Officer in contravention of the provision of Section 13 of Special Act. Similarly search made and seizure list prepared by the Investigating Officer as well as the informant were not a competent police officer under Section 15 of the Act and therefore, the institution of the case as well as its investigation suffers from material irregularity an illegality and in view of the lack drop of such irregularity cognizance of the offence taken by the CJM is unsustainable.

19. Thus the above decisions reiterated by the various Hon'ble High Courts in line with the **Delhi Administration Vs. Ram Singh** reported in **AIR 1962 SC 63** holding that violation of the mandatory provisions would vitiate and nullify the entire criminal proceedings."

4. In the case on hand, admittedly, the respondent is



not a Special Officer as mentioned under the ITP Act, 1956. Further, it is also seen that there is no authorization to the effect of conferring as such special status as to discharge a duty under ITP Act, 1956. That apart, the Deputy Superintendent of Police, who had sanctioned permission to conduct the search, is also not found to be a Special Police Officer or Trafficking Police Officer as contemplated under Section 2 (i) (j) of ITP Act. In these circumstance, the entire proceedings initiated by the respondent is vitiated and it is nothing, but, clear abuse of process of law."

7.The learned Additional Public Prosecutor appearing for the respondent police would submit that the first respondent police had complied with the mandatory provisions under the Act.

8.This Court has carefully considered the submission made on either side and also perused the materials available on records.

9.The guidelines given by this Court in the case of **S.Rangaraj and others Vs. the Commissioner of Police** reported in **2015-1-L.W.77** and in the case of **Kadek Dwi ani Rasmini Vs. K.Nataraja, Inspector of Police** reported in **2019-1-L.W.161** is that the Magistrate must ensure that the police have followed the mandatory requirements under Section 15 of the Immoral Traffic (Prevention) Act, 1956. In this case the mandatory requirements have not been followed.

10.In view of the above, this Court is of the considered opinion that the continuation of the investigation against the petitioners is an abuse of process of law and in the interest of justice, the same requires the interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

11.Accordingly, these criminal original petitions are allowed and the FIR in Crime No.953 of 2019, on the file of the first respondent is hereby quashed. Consequently, connected criminal miscellaneous petitions are closed."

5.To the very same effect, there is another Judgment dated 15.12.2020 made in Crl.O.P.(MD)No.12956 of 2020. It is now pointed out that the Government of Tamil Nadu had issued G.O.Ms.No.618, Social Welfare Department dated 13.04.1987. The Government of Tamil Nadu had appointed 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. The said G.O is as follows:-



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Government Orders

Important Tamil Nadu Government Orders

GOVERNMENT OF TAMILNADU

ABSTRACT

Act – The Suppression of Immoral Traffic in Women and Girls Act 1956 (Central Act 104 of 1956) Special Police Officers under Sections 13 (2) and 13 (3) (1) of the Act – Appointed.

SOCIAL WELFARE DEPARTMENT

G.O.Ms.No.618

Dated: 13-04-1987
Panguni 30, Atchaya,
Thiruvallur Aandu 2018

Read also:

1. G.O.Ms.No.2527, Home, Dated: 6-9-58
2. G.O.Ms.No.2911, Home, Dated: 29-6-84
3. From the Addl. Registrar, High Court, Madras Ir.No.ROC.2253/84/12 dt: 13-8-85
4. From the Director of Approved Schools and Vigilance Service, letter No.23215/B3/85, dated: 20-09-85.

ORDER:

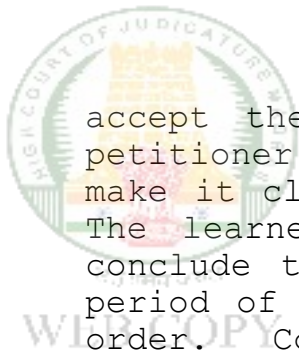
In exercise of the powers conferred by Section 13 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956) and in supercession of the orders issued with G.O.Ms.No.2527, Home dated the 6th September 1958 and G.O.Ms.No.2014, Home, dated: the 29th June 1964, the Governor of Tamilnadu 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.

Sd/- C. Thangaraju,
Commissioner and Secretary to Government.

Copy of G.O.Ms.No.638, Home Department, dated 27th February 1960.

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6.The earlier orders relied on by the learned counsel appearing for the petitioner do not contain any reference to this G.O. In this case, search and investigation was conducted only by Mrs.M.Alagammal, Inspector of Police. She is a Special Police Officer as per the aforesaid G.O.Ms.No.618, Social Welfare Department, dated 13.04.1987. Therefore, I am not in a position to



accept the contention of the learned counsel appearing for the petitioner. This criminal original petition stands dismissed. I make it clear that I have not gone into the merits of the matter. The learned Judicial Magistrate No.1, Pudukkottai is directed to conclude the trial on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2022

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.1,
Pudukkottai.
- 2.The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P(MD)No.133 of 2022
25.04.2022

PKP/18.05.2022/6P/4C