



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD) No.5283 of 2022

and

Crl.M.P(MD) Nos.3745 and 3747 of 2022

Venkatesan

...Petitioner

Vs.

1. State Represented by
The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
(Crime No.355 of 2021)

2. A.Murugan
The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.

...Respondents

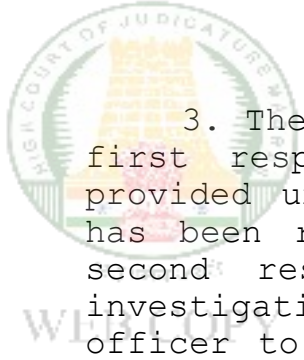
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records relating to the proceedings in C.C.No.22 of 2022 on the file of learned Judicial Magistrate, Palani, Dindigul District and quash the same as against the petitioner.

For Petitioner	:	Mr.S.Mahendrapathy for Mr.M.Vasanthan
For Respondent No.1 & 2	:	Mr.R.M.Anbunithi Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in C.C.No.22 of 2022 on the file of learned Judicial Magistrate, Palani, Dindigul District

2. The case of the prosecution is that on 19.08.2021 at about 4.00 pm., when the second respondent was on patrol duty, they got information that prostitution was running in the Mahalakshmi lodge and they immediately searched the lodge and found that prostitution was conducted and got statement from the witnesses They were used by the first and second accused for prostitution.



3. The learned counsel for the petitioner would submit that the first respondent failed to follow the mandatory provisions as provided under the act while searching the premises and the case has been registered against the settled principles of law. The second respondent registered a case and he himself is the investigating officer. The first respondent is not the authorised officer to conduct the investigation as contemplated under Section 13 of the Act. Arrest is not done in accordance with the mandatory provisions under the Act and while searching the premises Sections 14(i)(ii) and (iii) and Section 15(2) of the Act has been violated. The first respondent is not a special officer as per section 2(i) of the Act and there is no authorization to that effect of conferring as such special status as to discharge a duty under the Act.

4. The learned Additional Public Prosecutor would submit that as per the memorandum dated 10.11.2017 issued under Section 13 of the immoral traffic Act 1956

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

6. The main ground raised in the present petition is that the respondent police did not follow the mandatory requirements under Section 15 of the Immoral Traffic (Prevention) Act, 1956. For proper appreciation, the relevant portions in the judgment referred by the learned counsel appearing for the petitioner are extracted hereunder:-

28. A careful look at the provisions of Section 15 would show that a Special Police Officer or a Trafficking Police Officer can enter upon any premises and cause a search without warrant, only after satisfying the following:-

(i) he should have reasonable grounds for believing that an offence punishable under this Act has been or is being committed;

(ii) he must believe that such an offence is committed in respect of a person living in the premises;

(iii) he should believe that the search of the premises with warrant cannot be made without undue delay; and

(iv) he must record the grounds of his belief before entering the premises.

29. The expression "Special Police Officer" is defined in Section 2(i) of the Act, to mean a Police Officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act. Similarly, the expression "Trafficking Police Officer" is defined in Section 2(j) to mean a Police Officer appointed by the Central Government under Section 13(4). I do not know and I have not come across any such Trafficking



Police Officer appointed by the Central Government in terms of Section 13(4), at least in the State of Tamil Nadu.

30. Under Sub-section (2) of Section 15, the Special Police Officer or the Trafficking Police Officer should also call upon two or more respectable inhabitants, at least one of whom should be a woman of the locality in which the place to be searched is situate, to attend and witness the search. For the purpose of enforcing the attendance of such respectable inhabitants, the Police Officer is obliged to issue an order in writing to them. If the person, who is called upon to attend and witness the search, refuses or neglects to comply with the notice, despite an order in writing being delivered to him, he is liable to be punished for an offence under Section 187 of the IPC, by virtue of Sub-section (3) of Section 15. An immunity is granted under Sub-section (6) of Section 15 to persons taking part in or attending and witnessing a search, from any civil or criminal proceedings in respect of anything lawfully done in connection with the search.

31. The Special Police Officer or the Trafficking Police Officer, who makes a search, should be accompanied by at least two women Police Officers. If any woman or girl is removed under Sub-section (4) from the premises of search, she could be interrogated only by the woman Police Officer.

32. Day in and day out, newspapers compete with each other in publishing reports along with photographs of girls, whenever any search is carried out under Section 15 of the Act and any woman is removed from a place. The website of the National Crime Records Bureau shows that a total of about 2,44,270 incidents of crime against women were reported in the whole country during the year 2012. Out of them, about 2563 constitute cases under the Immoral Traffic (Prevention) Act, 1956. Interestingly, 19.5% of such cases (about 500 cases out of those 2563 cases) were reported only in Tamil Nadu. This can be taken either as an indication that incidents of crime under the said Act is on the increase in Tamil Nadu or as an indication of the role played by the Police in the State of Tamil Nadu in taking the crimes under this Act more seriously than what their counterparts in the other States do.

33. Unfortunately, no accountability is fixed on the police to see whether all the requirements of Section 15 are complied with or not. No one calls upon the Special Police Officer or the Trafficking Police Officer (i) to produce records to show whether he has minuted the grounds of his belief that an



offence punishable under the Act is committed or has been committed in respect of a person living in any premises,

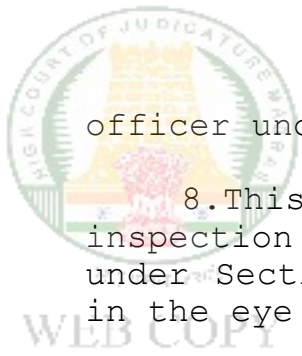
(ii) to produce records to show his subjective satisfaction that the search of the premises with warrant cannot be made without undue delay, (iii) to produce records to show whether two respectable inhabitants of the locality attended and witnessed the search, (iv) to show whether persons removed from such premises were subjected to medical examination and produced before the appropriate Magistrate immediately, and (v) to produce proof to show that two women Police Officers accompanied them and the interrogation of any woman was done only by them.

34. Many times, even persons who are booked under the provisions of this Act, do not appear to challenge the procedure adopted. This is perhaps due to the fact that in most of the cases, the Police find it convenient to book a person only for an offence under Section 8, which is punishable on first conviction, either with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 5,000/-. Therefore, it appears that people choose to plead guilty and pay the fine even on the first occasion and get off, instead of going through the mill, by facing the prosecution and challenging the procedure followed by the Police. The remedy is seen as worse than the disease.

36. Therefore, the only presumption that I can draw is that as against the writ petitioners herein, the Police did not carry out a search by following all the steps prescribed in Section 15. When the mandate of the law is so clear in Section 15, the respondents cannot carry out a search de hors Section 15.

37. The conclusion that we can arrive at, on the basis of the above discussion, is two fold. If the Police carry out a search of the premises where the petitioners are carrying on business activities, after following all the steps prescribed in Section 15, the petitioners cannot come under Article 226, but may have to seek redressal somewhere else. But, if the respondents are in the habit of carrying out searches in a manner not prescribed by Section 15, then the same actually tantamount to an unlawful interference with the fundamental right of the petitioners to carry on any business or profession which is not declared as unlawful by any legislation.

7. In the case on hand, the inspection was not carried out by the Special Police Officer or the Trafficking Police Officer and the Officer who carried out the inspection, was not an authorized



officer under Section 15 of the Act.

8.This Court has time and again 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 becomes illegal in the eye of law.

9.In view of the above observations, the entire proceeding itself is vitiated and this Court has no hesitation to interfere with the proceedings in C.C.No.22 of 2022 on the file of learned Judicial Magistrate, Palani, Dindigul District and same is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

To

- 1 The Judicial Magistrate,
Palani, Dindigul District.
2. The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court.

+1 CC to M/s.M.VASANTHAN, Advocate (SR-14030[F] dated 24/03/2022)

Cr1.O.P.(MD) No.5283 of 2022

and

Cr1.M.P(MD) Nos.3745 and 3747 of 2022

22.03.2022

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MS/01.04.2022/5P.5C