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CRL.R.C.(MD).No.544 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.07.2022

Delivered on : 22.08.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.544 of 2022

and

CRL.M.P.(MD)No.6766 of 2022

V.Abishek

: Petitioner/A3

Vs.

State of Tamil Nadu Rep.by
The Inspector of Police,
Asaripallam Police Station,
Nagercoil,
Kanyakumari District.

: Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the trial Court records and set aside the impugned order of Crl.M.P.No.9957/2021 in C.C.No.282/2020, dated 05.05.2022 passed by the learned Judicial Magistrate No.I, Nagercoil as illegal.

For Petitioner : Mr.V.Balaji Rajaram,

For Respondents : Mr.S.Manikandan,
Government Advocate (Criminal Side)



ORDER

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The Criminal Revision Case is directed against the order passed in CrI.M.P.No.9957/2021 in C.C.No.282/2020, dated 05.05.2022 on the file of the learned Judicial Magistrate No.I, Nagercoil, dismissing the discharge application filed under Section 239 of Code of Criminal Procedure.

2. The petitioner is the third accused in C.C.No.282/2020 on the file of the Judicial Magistrate Court No.I, Nagercoil.

3. The respondent Police registered a case in Crime No.100 of 2019 against four persons, including the petitioner for the offence under Sections 3(2) (a), 4(2)(c), 5(i)(a) and 7 (1)(a) of Immoral Traffic (Prevention) Act.

4. The case of the prosecution is that on receipt of secret information about the running of brothel home in the name of 'Sree Rajaguru Panchakarma Varuma Massage Centre' the respondent Police went to that spot and made search and that the Police personnel found the petitioner along with two ladies in compromising state and on enquiry, it was also found that the first accused Ananth is running the massage centre; that the accused Subramaniam is the owner of the premises and that the accused Adarsh is helping the accused Ananth in running the brothel house.



5. The respondent after completing the investigation, has laid a final report against four persons including the petitioner for the offence under Sections 3(2)(a), 4(2)(c), 5(i)(a) and 7 (1)(a) of Immoral Traffic (Prevention) Act and the case was taken on file in C.C.No.282 of 2020 and is pending on the file of the Court of the Judicial Magistrate No.I, Nagercoil. The petitioner, after entering into appearance, has filed a petition under Section 239 of Cr.P.C, seeking discharge and the learned Magistrate after enquiry, has passed the impugned order, dated 05.05.2022, dismissing the said petition. Aggrieved by the said dismissal of the discharge application, the third accused has come forward with the present criminal revision.

6. The main contention of the petitioner is that the allegations against him are groundless and there is no iota of evidence to connect the petitioner with the alleged offence and that the allegations against him are absolutely vague and improbable.

7. As already pointed out, the prosecution has laid the final report for the alleged offence under Sections 3(2)(a), 4(2)(c), 5(i)(a) and 7 (1)(a) of Immoral Traffic (Prevention) Act.

8. The learned counsel for the petitioner would submit that even according to the prosecution, the petitioner is not the owner of the premises nor the tenant



or lessee and that there is no allegations or averment that the petitioner is keeping the brothel or allowing the premises for running a brothel and as such, the allegation against the petitioner is not sufficient enough to attract the offence under Section 3 (2)(a) of Immoral Traffic (Prevention) Act.

9. It is not the case of the prosecution that the petitioner had advertised for customers nor arranged for client for prostitution and it is not the case of the prosecution that the accused has procured or attempted to procure for the purpose of prostitution. It is also not the case of the prosecution that the petitioner had carried out prostitution in public places and as such the allegations or charges levelled against the petitioner are not sufficient to attract the other offence under Sections 4(2)(c), 5(i)(a) and 7 (1)(a) of Immoral Traffic (Prevention) Act.

10. The learned counsel for the petitioner would further submit that the petitioner believing that it was a legally authorised massage centre, went to the massage centre for back pain therapy and that he has no knowledge about the brothel house and he was not having any contact with the co-accused.

11. No doubt, the respondent has filed a counter, as if the petitioner is also the part of the brothel house. The learned Magistrate, by observing that the pleas



raised by the petitioner that the Sections of Immoral Traffic (Prevention) Act with which, he was charged would not apply to the customers, cannot be decided preliminary, only on the basis of the final report filed by the respondent, dismissed the petition.

12. As rightly contended by the learned counsel for the petitioner, in the FIR, it has been specifically alleged that two victim ladies were found along with the petitioner in semi- nude dress. According to the prosecution, the premises in which, the alleged massage centre is functioning, is owned by one Subramaniam, who is arrayed as fourth accused in the charge sheet and that the first accused Anand has taken the premises on lease and is running the massage centre. Even according to the prosecution, two ladies were found at the massage centre at the time of alleged search.

13. No doubt, in the case of the prosecution that the second accused Adarsh and the petitioner Abishek have been helping the first accused in running the brothel house. But as already pointed out, in the FIR, it has been alleged that he was found in compromising position with two victim ladies.

14. The learned counsel for the petitioner would submit that the second accused has given a voluntary confession statement, wherein he has specifically



stated that the petitioner was only a customer and the petitioner was allowed to remain with two girls at the time of alleged search. He would further submit that sexual work is not illegal, but running a brothel is illegal. He would also submit that it is not the case of the prosecution that the victim girls were induced or coerced by the petitioner to indulge in prostitution.

15. The learned counsel for the petitioner has relied on a decision of this Court in **Udhaya Kumar Vs. The State.rep.by the Inspector of Police, Anti-Vice Squad-II Police Station, Chennai CCB**, in CrI.OP.No.10334 of 2022, wherein the petitioner therein was found along with sex workers and this Court has observed that there is no material to show that the petitioner was involved in any sexual act at the said place and that the persons, who have been rescued from the said place have made any allegation against any of the individuals, much less the petitioner therein and the relevant passages are extracted hereunder :

*“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.*



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9. *In the case on hand, merely because the petitioner was in the place, which is alleged by the respondents to be a brothel being run by some person, the petitioner cannot be fastened with any penal consequence and further, the act of the petitioner 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 petitioner. That being the case, the petitioner not being alleged to be a person coercing the sex worker to commit the sexual act, continuing the First Information Report against this petitioner is nothing but a futile exercise and would serve no purpose.”*

16. As rightly contended by the learned counsel for the petitioner, a perusal of the FIR and the confession taken from the co-accused and other materials would reveal that the petitioner had visited the massage centre as a customer.

17. It is pertinent to note that visiting a brothel house as a customer would amount to being immoral or unethical, but certainly not illegal or unlawful and as such, he would not be mulcted with criminal liability for the offence under the Immoral Traffic (Prevention) Act.



18. As already pointed out, it is not the case of the prosecution that the petitioner had coerced or induced the victim girls to commit the sexual act or that he is helping the other accused in getting the customers.

19. Considering the above, this Court is of the clear view that permitting the prosecution to proceed against the present petitioner would serve no purpose and the same would only amount to abuse of process of law. Hence, this Court concludes that the order of the learned Judicial Magistrate No.I, Nagercoil in CrI.M.P.No.9957/2021 in C.C.No.282/2020, dated 05.05.2022, is liable to be set aside.

20. In the result, the Criminal Revision is allowed and the impugned order dated 05.05.2022 passed by the learned Judicial Magistrate No.I, Nagercoil, in CrI.M.P.No.9957/2021 in C.C.No.282/2020, is hereby set aside. Consequently, connected Miscellaneous Petition is closed.

22.08.2022

Index : Yes/No

Internet : Yes/No

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CRL.R.C.(MD).No.544 of 2017



- To
1. The Judicial Magistrate No.I,
Nagercoil.
 - 2.The Inspector of Police,
Asaripallam Police Station,
Nagercoil, Kanyakumari District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 - 4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

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