



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)No.14059 of 2021

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1.Balamurugan

2.Jaya Robert

... Petitioners/Accused No.1 & 3
Vs.

1.State of Tamilnadu

Represented by its,
Inspector of Police,
Nesamani Nagar Police Station,
Kanyakumari District.
(Crime No.21 of 2020)

... 1st Respondent/Complainant

2.Muthukrishnan

...2nd Respondent/Defacto
Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.516 of 2020 on the file of the Judicial Magistrate Court No.II, Nagercoil and quash the same against the petitioners.

For Petitioners : Mr.R.Pon Karthikeyan

For R1 : Mr.B.Thanga Aravindh
Government Advocate(crl.side)

For R2 : Mr.P.T.Ramesh Raja

ORDER

The petition has been filed to quash the proceedings in C.C.No.516 of 2020 on the file of the Judicial Magistrate No.II, Nagercoil, for an alleged offences under Sections 3(2)(a), 4(2)(a), 5(1)(a), 7(1)(a) of Immoral Traffic (Prevention) Act, 1956.

2.The case of the prosecution is that on 19.02.2020 at about 17.00 p.m., when the respondent police and his police party were on regular rounds, the defacto complainant informed about the immoral traffic business at Franko Ayurveda Massage Centre, which is situated nearby Derik. Immediately, the respondent police sent a search warrant to the concerned Jurisdictional Magistrate and went to the spot where the alleged brothel business had gone and on identified by the defacto complainant, the respondent police enquired the persons at Franko Ayurveda Massage Centre and on enquiry and search, they found that the accused persons were all running the brothel business with two girls at Franko Ayurveda Massage Centre and seized 10 condoms and Rs.1,000/- from the accused persons. Hence, the case.



3.The learned counsel for the petitioner would submit that as far as the petitioners are concerned, they did not involve in any crime as alleged by the respondent police. None of the mandatory provisions under the Act has been followed while searching the premises and the case has been registered against the settled principles of law. Therefore, the entire proceeding is vitiated and a clear abuse of process of law. He would further submit that the first respondent is not the authorised officer to conduct the investigation as contemplated under Section 13 of the Act. The arrest was also not done under the Act and while searching the premises, the procedures prescribed under Section 14 (i) (ii) and (iii) and Section 15(2) of the Act, have been violated. Thus, he would pray to quash the impugned proceedings. The learned counsel in order to substantiate his submissions, relied upon the judgment of this Court in **Kadek Dwi Ani Rasmini and Others vs K.Natarajan and others** reported in **2019(1) LW crl 94**.

4.Per contra, the learned Government Advocate (crl.side) appearing for the respondent police would submit that based on the materials collected by the respondent police, a *prima facie* case has been made out against the petitioners and there are absolutely no grounds to interfere with the proceedings.

5.Heard the learned counsel appearing on either side and perused the records.

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 petitioners 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.



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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 proceedings itself is vitiated and this Court has no hesitation to interfere with the proceedings in C.C.No.516 of 2020 on the file of the Judicial Magistrate Court No.II, Nagercoil and same is hereby quashed as against the petitioners herein. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

cp

To:

Enclose copy of Joint Compromse memo.

1.The Judicial Magistrate Court No.II,
Nagercoil.

2.The Inspector of Police,
Nesamani Nagar Police Station,
Kanyakumari District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-13154[F] dated
21/03/2022)

CrI.O.P. (MD) No.14059 of 2021

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