



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2022

CORAM :

THE HONOURABLE **Mr. JUSTICE G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.20362 of 2021

and

Crl.M.P.(MD)No.11563 of 2021

Majas

... Petitioner/
Accused No.4

Vs.

1.The Inspector of Police,
Kottar Police Station,
Kanyakumari District,
Kanyakumari.
(Crime No.81 of 2021)

...1st Respondent/
Complainant

2.Sasikumar

...2nd Respondent/
Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the First Information Report in Crime No.81 of 2021 dated 23.02.2021 on the file of the first respondent and quash the same as illegal as against the petitioner.

For Petitioner	: Mr.T.Lajapathi Roy
For R1	: Mr.B.Thanga Aravindh Government Advocate (Criminal side)
For R2	: No Appearance

ORDER

This petition has been filed to quash the First Information Report in Crime No.81 of 2021 dated 23.02.2021 on the file of the first respondent.

2.The case of the petitioner is that the petitioner along with other accused indulged in immoral activities in their premises.

3.The learned counsel for the petitioner would submit that according to Section 13 of the Act, only the officer who is the rank of Police Inspector or above, who is specifically authorized by the Government, are entitled to investigate the offences under the ITP Act. In the case on hand, the first respondent is not the competent officer and he was not appointed as Special Officer. He would further submit that 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. 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 petitioner and there are absolutely no grounds to interfere with the proceedings. He would further submit that the investigation is completed and final report was filed before the learned Judicial Magistrate No.3, Nagercoil.

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 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 Crime No.81 of 2021 dated 23.02.2021 on the file of the first respondent and same is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

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 Inspector of Police,
Kottar Police Station,
Kanyakumari District,Kanyakumari.

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

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-5581[F] dated 11/02/2022)

CrI.O.P. (MD)No.20362 of 2021
10.02.2022

RK(18/03/2022) 5P 4C