



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.20919 of 2021

and

Crl.M.P(MD)No.12045 of 2021

Anand @ Sivasubramania Marthandan

... Petitioner/Accused No.1

Vs.

1.The State represented by,
The Inspector of Police,
K.Pudur (E5-Mattuthavani Police Station),
Madurai City.

(Crime No.1309 of 2021)

... 1st Respondent/Complainant

2.Thirupathi

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the FIR in Crime No.1309 of 2021 on the file of the first respondent police and quash the same insofar as the petitioner is concerned.

For Petitioner

: Mr.T.Lenin Kumar

For R - 1

: Mr.B.Thanga Aravindh

Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed by the petitioner to quash the FIR in Crime No.1309 of 2021 registered for the offences under Sections 3(2)(b), 4(2)(c), 5(1)(a) and 6(1)(a) of the Immoral Traffic (Prevention) Act, 1956, (hereinafter referred to as 'the Act') on the file of the first respondent, in which the petitioner is arraigned as first accused.

2. The case of the prosecution is that the petitioner along with other accused persons have committed the offences under the above said Act.

3. The learned counsel appearing for the petitioner mainly contended that the first respondent is not authorized to conduct investigation as stipulated under Section 13 of the Act and the second respondent did not follow the mandatory procedure contemplated under Section 14(3) of the Act to conduct search and seizure. The first respondent violated the procedure mandated under



Sections 14(1), 14(2) and 14(3) of the Act and conducted investigation. The procedure as contemplated under Section 15(2) of the Act with regard to search, the first respondent failed to follow any of the procedure as contemplated under the said provision.

4. The learned Government Advocate (Criminal Side) submitted that the second respondent is the competent person to initiate proceedings under the Act with regard to conduct search and seizure. After following due process of law, the FIR has been registered against the petitioner and other accused. The quashment of FIR is pre-mature and the grounds raised by the petitioner cannot be considered at this stage.

5. Heard both sides and perused the materials available on record.

6. On a perusal of the materials available on record, it is seen that the petitioner is arraigned as first accused. Even according to the case of the prosecution, the petitioner is neither an owner of the lodge nor administered the lodge. There is no specific averment against the petitioner to attract the offence as alleged by the prosecution. The first respondent did not follow the procedure laid down under Sections 15 and 16 of the Act. In this regard, it is relevant to rely upon the Judgment of this Court reported in **2019 (1) CTC 385** in the case of **Kadek Diwi Ani Rasmini Vs. K.Natarajan, Inspector of Police** as follows :-

"42[6].The case diary clearly reveals the fact that the mandatory provisions under Section 15 of the Act, has been given a clear go by. None of the guidelines given by this Court in the judgment in Mr.S.Rangaraj & Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others, referred supra has been followed.

43[7].There is a striking similarity like the previous case in the modus operandi adopted by the Police in this case. The manner which a decoy was used and a raid was conducted and an FIR was registered, is a replica of what this Court saw while dealing with W.P.No.29995 of 2018.

44[8].The respondent Police for reasons best known to him has come to the conclusion that the Spa is a brothel and prostitution is conducted there. Unfortunately all the persons involved, right from the complainant up to the 6 stage of conducting the raid, not one respectable inhabitant of the locality was called as a witness. There was no proof of a single incident of prostitution, or of the activities of a prostitute.

45[9]. The respondent has assumed that he has



unfettered power without realising that he is bound by the provisions of the Act .The more the power, the more must be the restrained in using the power. If the Police is permitted to exercise their powers under the Act in this manner, it is possible for the Police to brand any Spa Centre or a Massage Parlour as a brothel. It is only to keep check on the illegal use of power, mandatory requirements are prescribed under Section 15 of the Act, and has been clearly spelt out by this Court in Mr.S.Rangaraj &Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others, referred supra. Using the Special Sub Inspector belonging to the same Police team as a decoy to lay the trap and thereafter to conduct a ride,which ultimately did not result in a scrap of material to show that a brothel was run by the Spa, has been frowned upon by this Court in the judgment in Ratnamala referred supra and this Court held that such a technique is against all standards of decency and it shocks the conscience of the Court and such methods instead of preventing the evil are likely to only encourage it.

46[10]. This Court is of the considered view that the entire action of the respondent is illegal. This is clearly a case of colourable exercise of power. If this power goes unchecked, Spa Centre or a Massage Parlour can be run only under the mercy of a Police Officer. Foran extraneous consideration, the Police can brand any Spa or a Massage Centre as a brothel and even if the brothel is being run in the name of aSpa or a Massage Centre, no action will be taken. This situation is neither good for the society nor to the Police force.

47[11].The respondent Police which is a specialised wing to investigate cases under the Act, does not seem to resort to the provisions of Section 16 of the said Act. By resorting to Section 16 of the said Act, there will be a lot of authenticity in the action taken by the Police since information will be provided to the Magistrate by placing necessary materials and based on the direction given by the Magistrate, the Police can take appropriate action against any Spa or a Massage Centre, which indulges in prostitution. There are rotten apples in every business and stringent action must be taken against them. However, the Police must get out of this mind set of painting all the Massage Centres and Spas as brothels.

48[12].As stated above, the respondent Police being as specialised wing, should conduct the

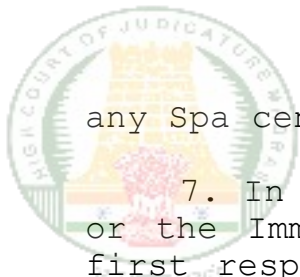


investigation in a more professional manner in accordance with the provisions of the Act, arrangements should be made for maintaining direct observations on the premises, and evidence of such observations should be recorded. Even if traps are resorted to, other evidence collected over a period of time on the observations made on the premises/centre, should also be adduced to strengthen the impression or inference of the continuous of the use of the place as a brothel. This will give a lot of authenticity while complying with the mandatory requirements under Section 15 of the Act. The Act was conceived to serve a public social purpose viz; to suppress immoral traffic in women and girls, to rescue fallen women and girls and to revert deterioration in public morals.

49[13]. In this case, the so called victims have filed independent petitions before this Court questioning the action of the respondent Police in branding them as victims. The so called confessions taken from the victims on 02.11.2018, is verbatim identical and the learned Magistrate has proceeded to send all these girls, in a routine manner to the Home, even without enquiring the genuineness of the facts projected by the Police. It is high time that the Magistrates deal with these types of cases with more sensitivity and ensure that genuine Spas and Massage Centres are not labeled as brothels. Even at the time when the victims are produced before the Court along with the case diary, the Magistrate must ensure that the Police have followed the mandatory requirements under Section 15 of the said Act. This will go along way in preventing the Police from misusing the powers under the Act, against the Spas and Massage Centres.

50[14]. In view of the above, this Court is of the considered opinion that the continuation of the investigation against the petitioner is an abuse of process of law and in the interest of justice, the same requires the interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. In the result, the FIR in Crime No.51 of 2018, on the file of the respondent Police is hereby quashed. Accordingly, this Writ Petition is allowed. There shall be no order as to costs"

This Court held that the respondent has assumed that the police has unfettered power without realising that they are bounded by the provisions of the Act. The more the power must be the restrained in using the power. If the police is permitted to exercise there powers under the Act in this manner, it is possible for the police to brand



any Spa center or a massage parlour as a brothel.

7. In the case on hand, the respondent is not a Special Officer or the Immoral Traffic Police Officer. No search was made by the first respondent on receipt of the complaint lodged by the second respondent. The first respondent did not follow any procedure as contemplated under the provisions of the Act. Without any power and jurisdiction, the respondent police mechanically, registered the case as against the petitioner, and the FIR has no legs to stand further and it is nothing but clear abuse of process of law. Therefore, this Court is inclined to quash the FIR.

8. Accordingly, the Criminal Original Petition stands allowed and the FIR in Crime No.1309 of 2021, on the file of the first respondent police is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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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,
K.Pudur (E5-Mattuthavani Police Station),
Madurai City.

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

Crl.O.P(MD)No.20919 of 2021
10.02.2022

SAR(CO)
KB(23.02.2022) 5P 3C