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Crl.O.P.No.4679 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24..03..2023

Coram

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Criminal Original Petition No.4679 of 2021

and

Crl.M.P.No.2995 & 2996 of 2021

Aruna

..... Petitioner

-Versus-

The State Rep. by
The Inspector of Police,
Ranipet Police Station,
Ranipet District.
[Crime No.1016 of 2020]

..... Respondent

Petition filed under Section 482 of the Criminal Procedure Code, 1973, praying to call for the records relating to the case in C.C.No.61 of 2020 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Ranipet, Ranipet District and to quash all further proceedings thereon insofar as the petitioner/A3 is concerned.

*For Petitioner : Mr.G.Saravanan
for Mr.Ganesh V Aranala*

*For Respondent : Mr.S.Balaji,
Government Advocate
[Criminal Side]*



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ORDER

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2. It is alleged in the final report that the petitioner was found in the company of a woman in a lodge. Since they were indulged in prostitution, the petitioner was arrested and subsequently, the impugned final report came to be filed for the offence u/s 4(1) and 7(1)(A) of The Immoral Traffic (Prevention) Act, 1956 (for short “**the ITP Act**”)

3. The learned counsel for the petitioner would submit that the petitioner cannot be made liable for any of the offences alleged even if the allegations in the impugned final report are true. The petitioner was admittedly not living on the earnings of prostitution in order to attract the offence u/s 4(1) of the ITP Act. Further Section 7 (1A) of ITP Act prohibits prostitution in any public place. Admittedly, the alleged offence is said to have taken place in a private room in a lodge. Hence, the offences are not made out as against the petitioner.



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4. The learned Government Advocate (Criminal Side) would however submit that the allegations in the impugned final report attract the offences alleged against the petitioner as he was found in the company of a woman in a lodge. Hence, he prayed for dismissal of the quash petition.

5. This court finds that neither of the offences alleged against the petitioner are attracted even if the allegations are found to be true.

Section 4(1) of the ITP Act, 1956 reads as under:-

“4. Punishment for living on the earnings of prostitution - (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of (any other person) shall be punishable with imprisonment for a term which may extent to two years, or with fine which may extent to one thousand rupees, or with both (and where such earning relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years. (2) where any person over the age of eighteen years is proved- (a) to be living with, or to be habitually in the company of, a prostitute;



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or (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling his prostitution; or (c) to be acting as a tout or pimp on behalf of prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of Sub-Section (1).”

It is not the case of the respondent/prosecution that the petitioner was living on the earnings of prostitution. Hence, the offence u/s 4(1) of ITP Act is not made out. The prosecution has alleged that the petitioner has committed the offence u/s 4(1)(a) of the ITP Act. However, there is no such provision in the ITP Act.

6. Section 7(1A) of the ITP Act, 1956 reads as follows:-

“7. Prostitution in or in the vicinity of public places- (1)

.....

..... ..

(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be



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punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. ”

There is no allegation in the impugned final report that an offence was committed in respect of a child or minor. Hence, the offence u/s 7(1)(A) of the ITP Act is not made out. This court on a petition filed by one of the co-accused, whose case is similar to that of the petitioner herein has quashed the proceedings against him in Crl.O.P.No.24981 of 2022. The relevant portion is extracted hereunder:-

“6. Reading of the above said provisions shows that if the person is living with or habitually in in the company of prostitute and if the offence committed under Section 7(1) is in respect of a child or minor, can be prosecuted under Section 4(1) and 7(1)(a) of Immoral Traffic (Prevention) Act, 1956. In the present case, there is no allegation against the petitioner as if the



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petitioner is living with or habitually in the company of prostitute and there is no allegation against the petitioner as if the petitioner has committed the offence in respect of child or minor.”

7. For the above all reasons the impugned criminal proceedings against the petitioner is an abuse of process of law and is liable to be quashed.

In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.61 of 2020 on the file of the District Munsif-cum-Judicial Magistrate, Ranipet, is quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

24..03..2023

Index : yes / no
Neutral Citation : yes / no
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To

- 1.The District Musnif-cum-Judicial Magistrate,
Ranipet, Ranipet District.
- 2.The Inspector of Police, Ranipet Police Station, Ranipet District.



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SUNDER MOHAN.J

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