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CrI.O.P.(MD)No.18066 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.09.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

CrI.O.P.(MD) No.18066 of 2022

and

CrI.M.P.(MD).Nos.12051 & 12052 of 2022

C.Karthick

... Petitioner

Vs.

1.The Inspector of Police,
Thilagarthidal Police Station,
Madurai City.
(Crime No.731 of 2019)

2.Hemalatha

.. Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records connected with the case in C.C.No.540 of 2021 pending on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal as against the petitioner.

For Petitioner : Mr.A.Prabhu Raj

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For R2 : Mr.J.Karthikeyan



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ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C. seeking for quashment of C.C.No.540 of 2021 pending on the file of the learned Judicial Magistrate No.II, Madurai.

2. The facts and brief as per the records would go to show that, on 16.09.2019, when the respondent Police has searched the Cosmopolitan Hotel situated near the Madurai Railway Station, they found that the petitioner along with the sex workers committed immoral trafficking activities. The respondent Police seized a sum of Rs.57,200/-, cell phones and swiping machine from the accused, basing on which, a case has been registered in Crime No.731 of 2019 and the respondent Police have filed a charge sheet in C.C.No.540 of 2021 on the file of learned Judicial Magistrate No.II, Madurai, against the petitioners and others, which has taken cognizance for the offence under Sections 3 (1), 4(1), 4 (2) (a), 4(2) (c), 5(1) (a) and 5(1) (c) of the Immoral Traffic (Prevention) Act, 1956.

3. Learned counsel for the petitioner submits that the petitioner is an innocent and in order to perform the marriage of his



brother on 08.12.2019, he was looking for accommodation in various hotel and he came to that Cosmopolitan Hotel and enquired with the hotel management, at that time, the respondent Police have searched the hotel and a case has been registered against him alleging that he has committed immoral trafficking activities. It is further submitted that he has no nexus with the offence alleged against other accused.

4. Learned Additional Public Prosecutor for the State supporting the charge sheet filed by the respondent Police.

5. Section 3 (1) of the Immoral Traffic (Prevention) Act, 1956, (hereinafter referred as “the above said Act”) deals with the punishment for keeping a brothel or allowing the premises to be used as a brothel. Section 4 (1) of the above said Act deals with the punishment for living on the earnings of the prostitution. Section 4 (2) (a) of the above said Act deals with the punishment, in case, if a person, who is aged 18 years is living with or a habitually in the company of a prostitute. Section 4 (2) (c) of the above said Act speaks about a punishment to be acting as a tout or pimp. Section 5 (1) (a) of the above said Act speaks about whoever procures or attempts a person with or without a consent for the purpose of prostitution. Section 5 (1) (d)



speaks about the punishment knowing for the person whom induces the person to carry prostitution.

6. In the case on hand, according to the prosecution version, on 16.09.2019, the petitioner was found along with a prostitute in Room Nos.234 and 235 at a Cosmopolitan Hotel near Madurai Railway Station. It is not the case of the petitioner that he is running a brothel house or he has been living in the brothel house. There is no allegation against him that he has procured or attempted to procuring the persons for the sake of prostitution. According to the prosecution version, the petitioner is a customer. It is the settled legal position that the customer cannot be prosecuted for any of the offence under Sections 3 (1), 4(1), 4 (2) (a), 4(2) (c), 5(1) (a) and 5(1) (c) of the Immoral Traffic (Prevention) Act, 1956. As there is no provision under the Immoral Traffic (Prevention) Act, punishing the customer, on this ground, therefore, that a case registered against the petitioner whom stated to be committed will not sustain.

7. According to the prosecution version, the Inspector of Police, Madurai, has received the information about the prostitution being done in the Cosmopolitan Hotel. The Police without obtaining



permission from the learned Judicial Magistrate No.II, Madurai, has conducted search at 12.40 P.M at the Cosmopolitan Hotel. As per Section 15 of the above said Act, the Special Police Officer alone empowered to take up the search. It is also required to take two respectable persons along with him. In the case on hand, the Special Sub Inspector of Police is also required to take two women constables whenever they were going to conduct the raid. The Division Bench in the case of ***Manikandan Vs. State*** in ***Crl.O.P.(MD).No.17180 of 2019***, held as follows:-

“5.In the decision relied on by the petitioner in Crl.OP(MD)Nos.16310 and 17442 of 2019 dated 10.02.2020 [Govindaraj vs. The Inspector of Police, Madurai], this Court has held as follows:-

"6.In support of his contention, the counsel for the petitioner relies on the judgment of this Court in Crl.O.P.No.15770 of 2019 dated 05.11.2019, wherein it has been held as follows:

“3. In the case on hand, the respondent neither being a special Police Officer nor a trafficking police officer authority to arrest or investigate the case. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of Mumtaj @ Behri Vs. The State (Government of NCT Delhi) reported in (2003



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Cri.L.J. 533, wherein, it has been held that the entire proceedings conducted by the Sub Inspector of Police in a case of involving Immoral Trafficking (Prevention) Act, who was not appointed as Special Police Officer was held to be illegal. It is relevant to note that the decision of the Hon'ble High Court of Kerala, in the matter of Thomas Vs. State of Kerala, which is held as follows:-

"17. In this regard it would be relevant to note here that in line with the above decision of the Hon'ble Apex Court, the Hon'ble Court of Kerala in the matter of Thomas Vs State of Kerala through Sub Inspector, vide para 4 has held that As held by the Hon'ble Apex Court in Delhi Administration Vs. Ram Singh (1962 SC 63), the special context of the Act, they will include detection, prevention and investigation of offences and the other duties which have been specifically imposed on them under the Act. Therefore, it is only the Special officer who is authorised to arrest and investigate the case under the Act, Crmc 3533/09 subject to the provisions of Section 14. Proviso to Section 14 provides that arrest without warrant can only be made by the Special Police Officer under his direction or guidance subject to his prior approval....



5. Therefore, when the arrest of the petitioner in this case is by a Sub Inspector, allegedly authorized by the Commissioner of Police, the Special Police Officer, and the authorization admittedly does not contain the name of the petitioner or the offence for which petitioner is to be arrested, it cannot be treated as an authorization as provided Crmc 3533/09 under Section 14 of the Act. If that be so, arrest and detention of the petitioner is illegal.

6. This Court in Sinu Sainudheen's case considered the effect of arrest and investigation in violation of mandatory provisions of the Act and held that violation of the mandatory provision would lead to unsuccessful prosecution and such prosecution would only be an abuse process of Court which warrants quashing the proceedings under Section 482 of Code of Criminal Procedure.

18. Again the scope of search and seizure to be done under the ITP Act, 1956 and the result of non-adherence of such procedure is further dealt with by the Hon'ble High Court of Jharkhand reported in 2008 (2) JCR 153 Rehan Ahmad @ Mojahid Rehan Ahmad @ Majid Rehan Vs. State of Jharkhand. The relevant portion is extracted hereunder:

It is a matter surprise that the Investigating



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Agency including the-prosecution over looked the provisions of Special Act in respect of competency of a person to institute a case and to file final form under Section 173, Cr.P.C., after investigation. Admittedly, Shri Gajanand Singh S.I of police was not a Special Police Officer under Section 15 of the Immoral Traffic (Prevention) Act, 1956 to make search and seizure of the vehicle. Similarly, Shri B.B.Sharma. Sub-Inspector of Police below the rank of Inspector was not a Special Police Officer under Section 13 of the Special Act to submit final form. Therefore, the entire criminal proceeding of the petitioners suffers from material irregularity and illegality.

8. I have examined the provisions of law carefully and I find substance in the arguments advanced on behalf of the petitioners that the investigation of the instant case, under the Special Act, was done by the Sub-Inspector of Police and not by a Special Police Officer in contravention of the provision of Section 13 of Special Act. Similarly search made and seizure list prepared by the Investigating Officer as well as the informant in were not a competent police officer under Section 15 of the Act and therefore, the institution of the case as well as its investigation suffers from material irregularity an illegality and in view of



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the lack drop of such irregularity cognizance of the offence taken by the CJM is unsustainable.”

8. In the case on hand, admittedly, there are no orders to show that the person, who has conducted the raid is the authorized person as mentioned under Section 15 of the Immoral Traffic (Prevention) Act, 1956. Since the respondent Police is not a Special Designated Police Officer and that the offence under Sections 3 (1), 4(1), 4 (2) (a), 4 (2) (c), 5 (1) (a) and 5 (1) (c) of the Immoral Traffic (Prevention) Act, 1956, is not applicable, the case against the petitioner is required to be quashed.

9. Accordingly, the Criminal Original Petition is allowed and C.C.No.540 of 2021 filed against the petitioner on the file of the learned Judicial Magistrate No.II, Madurai, is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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DR.D.NAGARJUN. J.

tsg

To

1.The Judicial Magistrate No.II, Madurai.

2.The Inspector of Police,
Thilagarthidal Police Station,
Madurai City.

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

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