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Crl.OP.No.13328 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.13328 of 2024

and

Crl.MP.No.8096 of 2024

Nivya Harikrishnan

... Petitioner

Vs.

The State rep by its
Sub Inspector of Police,
Valasaravakkam Police Station,
Chennai.
(Crime No. 416 of 2024)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to First Information Report in Cr.No.416 of 2024 on the file of the respondent police and to quash the same.

For Petitioner : Mr.Leelesh Sundaram B
for M/s.Nathan and Associates

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl.Side)



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ORDER

WEB COPY This Criminal Original Petition is filed to quash the criminal complaint registered against this petitioner for the offence under Section 3(2)(a), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956.

2. Based on the specific information received from the Sub Inspector of Police, case has been registered by Inspector of Police in Cr.No.416 of 2024 against this petitioner and another person by name Femina.

3. The learned counsel appearing for the petitioner submits that the very registration of the complaint and investigation suffers violation of Immoral Traffic (Prevention) Act, since the investigation in this case is not done by an authorized person as per the act, but by the Sub Inspector of Police. The learned counsel further submits that the raid conducted not in the presence of the respectable person in the locality as contemplated under the act, but, the F.I.R indicates that no respectable persons ready to stand as witness, therefore, the raid was done in the presence of police witness. The 3rd point canvassed by the petitioner is



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that when the owner of the premises was not present at the time of raid, she had been wrongly included as an accused in this case.

4. To buttress his submissions, the learned counsel also referred the reported judgment of this Court wherein certain guidelines been issued by this Court, how to conduct the raid based on information received for offence under Immoral Traffic (Prevention) Act.

5. The scrutiny of the records reveals, the above contention of the petitioner's counsel does not satisfy the requirement to quash the FIR as laid down by the Hon'ble Supreme Court in ***Bhajan Lal Case*** and ***Neeharika Infrastructure Pvt Ltd., Vs.State of Maharashtra and others.***

6. Firstly, in this case, the case is registered by one Mohammed Shafiullah, Inspector of Police, attached to Valasaravakkam Police Station and investigation is done by him and not by Sub Inspector of Police as contended by the counsel. Being a non cognizable offence, the law has been set in motion by the Sub Inspector of Police who is the informant in this case.



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7. Secondly, in case of this nature, in most of the time respectable

local witnesses will not be ready to come forward to stand as witnesses.

In such circumstances, the police cannot be left high and dry and allow the perpetrator of the crime to go free. Therefore, on several occasions, Courts have held that a reasonable attempt should be made by the raiding party to secure local witnesses. If local witness is not available or not ready to come forward to stand as witness, the police personnel in the raiding team can themselves act as witnesses to the search and seizure. Just because, the police stand as a witness for the search or seizure, the complaint cannot be quashed at threshold. Court should allow the Investigating Officer to collect evidence and complete the investigation in the manner known to law. The reliability and the veracity of the witnesses can be tested during the trial.

8. The last point regarding prosecuting the owner of the premises, it is to be noted that in this case, the raid has been conducted in a premises which under the garb of running a Spa alleged flesh trade been carried. The FIR itself discloses the name of the petitioner who happens to be owner of the premises. While so, non presence of the owner of premises at the time of raid cannot be a ground to exonerate her or him



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from being prosecuted. If material evidence collected during the course of investigation, that the premises was let out knowingly to carry out the illegal act by the owner and connivance of the owner, the prosecution will sustain.

9. In so far as, the guidelines mentioned in the judgments cited, this Court is of the view that whether these guidelines even if violated or not followed that will not any right to the suspected accused seek to quash of the FIR Hence, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

07.06.2024

Vv

To

1. The Sub Inspector of Police,
Valasaravakkam Police Station,
Chennai.
2. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN,J.

Vv

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