



Crl.A.No.499 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.04.2024

Coram:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 499 of 2017

S. Venkatesh

.. Appellant

Versus

1. The State Represented by the
Inspector of Police,
Mettur Police Station,
Mettur,
Salem District.
(Crime No.496/2009)

2. G.Poongodi

3. Venkatachalam

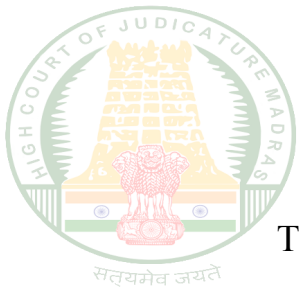
.. Respondents

Criminal Appeal is filed under Section 378 (4) of Cr.P.C to call for the records in C.C. No. 65 of 2010 on the file of Judicial Magistrate-I, Mettur, and set aside the judgement dated 31.12.2015.

For Petitioner .. Mr. PA. Kadirvel
Legal Aid Counsel

For Respondent .. Mrs. G.V. Kasthuri
Additional Public Prosecutor

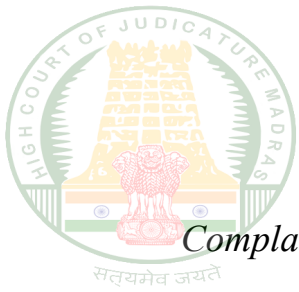
Mr. C. Venkatesan
Legal Aid Counsel for R2



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The *De facto Complainant* in Crime No. 496 of 2009 has come forward with this Criminal Appeal challenging the legality and correctness of the Judgment dated 31.12.2015 passed in C.C. No. 65 of 2010 on the file of the learned Judicial Magistrate No.I, Mettur. By the judgment dated 31.12.2015, the learned Judicial Magistrate No.1, Mettur acquitted the Respondents 2 and 3/Accused 1 and 2 from the criminal Prosecution initiated at the behest of the *De facto Complainant*.

2. The *De facto Complainant* is a resident of Cauvery Nagar, Mettur. According to him on 13.10.2009 at about 4.00 p.m. in the evening, he was proceeding to meet his friend Kannan in his house. At that time, the Accused 1 and 2 met the *De facto Complainant* and engaged in a conversation. During such conversation, the second Accused informed the *De facto Complainant* that a girl by name Saritha, aged 25 years is available in the house of the first Accused and if the *De facto Complainant* pays Rs.300/-, he can have sexual pleasure with the said Saritha. The second Accused therefore called the *De facto Complainant* to the house of the first Accused for having such pleasure. Further, the first Accused also informed the *De facto Complainant* that there are several girls available with her and if he pays Rs.300/- he can choose a girl and can have sexual intercourse with her. However, the *De facto Complainant* left the place without saying anything. According to the *De facto*



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Complainant, he went to the house of his friend Kannan and informed him about the offer made by the Accused Nos. 1 and 2. After discussion with his friend, he along with his friend Kannan went to Mettur Police Station and given a complaint. On the basis of such complaint, the case in Crime No. 496 of 2009 was registered on 13.10.2009 for the offences under Sections 3 (1), 6 (1) (a) (b) of the Immoral Traffic (Prevention) Act, 1956. Ex.P-4 is the First Information Report.

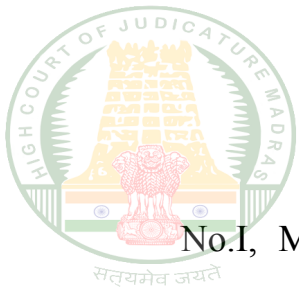
3. On receipt of Ex.P-4, P.W-9, Inspector of Police took up investigation and went to the house of the first Accused where she drew an observation Mahazar under Ex.P-5. She also drew a rough sketch under Ex.P-6. In the house of the first Accused, she saw the second Accused and one Saritha and therefore, she arrested both of them by informing them the reason. However, it was stated that the first Accused escaped from the house. As the said Saritha, who was involved in the offence was a married woman, P.W-9 handed over her to her husband. As far as the second Accused is concerned, he was sent to remand through Court. P.W-9 also conducted investigation in the house of the first Accused and recorded the statement of the witnesses. Subsequently, on 14.10.2009, P.W-9 has prepared an Alteration Report, under Ex.P-7 altering the offence from Section 3 (1), 6 (1) (a) (b) of the Immoral Traffic (Prevention) Act, 1956 to Section 3 (1) and 7 (a) of the Immoral Traffic



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(Prevention) Act, 1956. According to P.W-9, the house, which was used for immoral activity is surrounded by a temple, Market, three Courts, School, a Church etc., and it is a bustling locality. Therefore, P.W-9 thought it fit to take action to seal the premises. Therefore, P.W-9 conducted enquiry from the neighbours and others who have also given a complaint to her stating that the first Accused is not expected to use the premises for such an immoral act especially when there are several families residing in the locality with their children. On the basis of such complaints received, P.W-9 gave a proposal to the Sub-Collector, Mettur, stating that it is desirable to seal the premises used by the first Accused for such immoral activities. On the basis of such proposal given by P.W-9, the Sub-Collector, Mettur, passed an order in her proceedings bearing M.C. No.151/2009 (D) dated 31.10.2009 whereby the premises of the first Accused herein was sealed. Since P.W-9 was transferred, the investigation in this case was taken up by P.W-10 Inspector of Police, Mettur Police Station. P.W-10 also recorded the statement of the witnesses and after concluding the investigation, filed the charge sheet before the learned Judicial Magistrate No.1, Mettur.

4. The learned Judicial Magistrate-I, Mettur issued summons to the Accused for their appearance. On their appearance, copies were furnished to them under Section 207 of Cr.P.C. Thereafter, the learned Judicial Magistrate



No.1, Mettur, has framed the charges against the Appellants. When the

Accused were questioned about the charges, they denied them as false.

Therefore, trial was ordered. During the trial, the Prosecution examined ten witnesses as P.W-1 to P.W-10 and marked seven documents as Ex.D-1 to Ex.D-7. On the side of the defence, neither any witness was examined nor document was marked.

5. The trial Court, on appreciation of the oral and documentary evidence, concluded that P.W-9 and P.W-10 have no right to carry out investigation with reference to the offences punishable under the provisions of The Immoral Traffic (Prevention) Act, 1956. For this purpose, the learned Judicial Magistrate-I, Mettur placed heavy reliance on the decision of the Kerala High Court in the case of **C.P. Raju vs. State of Kerala** reported in **2014 Crl.Law Journal 2936**. Further, the learned Judicial Magistrate also held that the *De facto Complainant* said to have accompanied his friend Kannan to the Police Station where the said Kannan is said to have written the complaint, under Ex.P-1. However, the said Kannan was not examined as a witness by the Prosecution. Therefore, it was held that non-examination of the said Kannan is one of the flaws committed by Prosecution. The aforesaid reasons predominantly weighed the learned Judicial Magistrate-I, Mettur to record a

Judgment of acquittal as against the Accused-1 and Accused-2/ Respondents 2



and 3 in this Appeal.

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6. The learned Counsel nominated by the Legal Aid Committee Thiru. PA. Kadirvel submitted his argument on behalf of the Appellant. The learned Counsel submitted that the learned Judicial Magistrate-I, Mettur had in the discussion regarding the appreciation of evidence, stated that the witnesses had proved the Prosecution case. However, at the fag end, before concluding the judgment, the learned Judicial Magistrate-I, Mettur had acquitted the Accused on the ground that the Inspector of Police, Mettur Police Station has no power to investigate the cases under Immoral Traffic (Prevention) Act, 1956. According to the learned Judicial Magistrate-I, Mettur, the Immoral Traffic (Prevention) Act, 1956 is a Self-Contained Code and for investigating the cases registered under the said Act, Special Police Unit are formed. While so, the Inspector of Police or the Station House Officers does not have the power to investigate offences under Immoral Traffic (Prevention) Act, 1956. In order to lend support to such conclusion, the learned Judicial Magistrate-I Mettur, placed reliance on the decision of the Hon'ble High Court of Kerala. It is the contention of the learned Counsel for the Appellant that in the very same judgment, it was observed by the Hon'ble High Court of Kerala that the Accused need not be acquitted merely on the ground that the Inspector of Police or Station House Officers have no powers under such Act. It was held



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thereof that the Court can order for a fresh investigation to be conducted by the Special unit under the Immoral Traffic (Prevention) Act, 1956. However, the learned Judicial Magistrate-I, Mettur without considering the judgment of the Kerala High Court, in entirety, had read it in isolation and acquitted the Accused herein. Had he considered the entire judgment, he could have ordered an investigation to be conducted by the Special Unit. Therefore, it is submitted that the judgment of acquittal passed by the learned Judicial Magistrate-I, Mettur is perverse and suffers from legal infirmity.

7. Further, the learned Counsel for the Appellant submitted that the Government of Tamil Nadu issued a Government Order in G.O. MS No. 618, Social Welfare Department, dated 13.04.1987 which was also published in the Official Gazette of the State. In the said Government Order, it was held that the Police Officers in the Police Stations across the State are conferred with the power to investigate the cases arising out of the Immoral Traffic (Prevention) Act, 1956. Therefore, the conclusion reached by the learned Judicial Magistrate-I, Mettur in acquitting the Accused is liable to be set aside by this Court, as perverse.

8. The learned Counsel for the Appellant also invited the attention of this Court to the Writ Petition filed by the first Accused/second Respondent in



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this case challenging the order passed by the Sub-Collector, Mettur, in W.P.

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No. 7117 of 2010. By the order dated 12.11.2010, this Court dismissed the Writ Petition by holding that before passing the order to seal the premises of the first Accused, a show cause notice was issued to the first Accused and after complying with all the formalities, the order dated 31.10.2009 was passed by the Sub-Collector, Mettur. The order dated 12.11.2010 passed in W.P. No. 7117 of 2010 reads as follows:

“Therefore, the above judgement would make it very clear that the order under Section 18(1) is summary and only preventive in nature. The order is not in violation of the judgment of the Apex Court reported in AIR 1968 SC 1. Moreover the order has been passed only in the public Interest as per law. It is seen from the evidence available that the petitioner involved in immoral act. Therefore no leniency could be shown to the petitioner. Accordingly the petition is dismissed”.

9. The learned Counsel for the Appellant/*De facto* Complainant would further submit that the observation by the learned Judicial Magistrate-I, Mettur that P.W-2/Saritha did not support the case of the Prosecution, however, she was not declared hostile by the learned Additional Public Prosecutor before the trial Court is erroneous. Even if the evidence of P.W-2 is ignored, the other witnesses have clearly stated about the immoral traffic acts resorted to by the Accused. Therefore, merely because P.W-2 did not support the case of the Prosecution, the entire case of the Prosecution will not be vitiated. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of



acquittal recorded by the learned Judicial Magistrate, Mettur in C.C. No. 65 of

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2010, dated 31.12.2015 as perverse and to convict the Accused 1 and 2. The

learned Counsel for the Appellant also relied on the following the decision in

Shri. A.C. Aggarwal, Sub-Divisional Magistrate, Delhi and another -vs- Mst.

Ram Kali etc reported in (1968) 1 SCR 205: AIR 1968 SC1 :1968 cri LJ 82

the Hon'ble Supreme Court observed as follows:

“From the copies of the reports made in these cases to the Magistrate by the police-made available to us at the hearing of these appeals-it is clear that they disclose offences under Section 3 against the respondents. Therefore, the question is whether the Magistrate can choose to ignore the cognizable offence complained of and merely have recourse to Section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases like those before us the Magistrate who is also a court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in Sections 3 or 7 as the case may be, and only after the disposal of those cases take action under Section 18 if there is occasion for it. Under s.190(1)(b) of the Code of Criminal Procedure, the Magistrate is bound to take cognizance of any cognizable offence brought to his notice. The words "may take cognizance" in the context means "must take cognizance". He has no discretion in the matter, otherwise that section will be violative of Article 14. But as laid down in Delhi Administration v. Ram Singh only an officer mentioned in Section 13 can validly investigate an offence under the Act. Hence if the cases before us had been investigated by such an officer, there is no difficulty for the Magistrate to take cognizance of those cases. Otherwise it is open to him to direct fresh investigations by competent police officers before deciding whether the facts placed before him disclose any cognizable offence.”

10. In the above decision, it was held by the Hon'ble Supreme Court



that if the Police Officer, who is not competent to investigate the case has investigated it and filed the charge sheet, still, the Judicial Magistrate can take cognisance of such cases and to issue appropriate direction to investigate the case afresh by the Officers, who are competent to conduct investigation.

11. In **C.P. Raju -vs- State of Kerala** reported in **MANU/KE/0861/2014** the High Court of Kerala has observed as follows

“Case Note:

A. *Immoral Traffic (Prevention) Act, 1956 – Sections 13(1), 14 and 15 – A special Officer appointed under S.13(1) cannot delegate his powers to other subordinate officers other than on the grounds mentioned in Ss.14 & 15 of the Act. Though a special officer can seek assistance of a police officer under him, it does not mean that the assistant police officer is competent to investigate the offence, since he is not specially appointed by the Statute.*

B. *Criminal Trial-practice and procedure-Investigation by an officer, who is not authorised under the Statute-A delegated power cannot be further delegated unless otherwise expressly authorised in the special statute.*

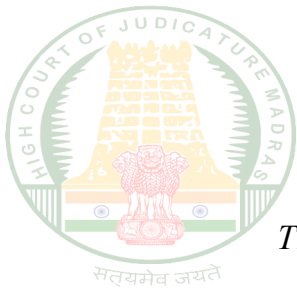
C. *Immoral Traffic (Prevention) Act, 1956-Section 13(1) and Criminal Procedure Code, 1973 – Section 482 – The case was registered by a Special Officer, but further investigation was entrusted to the S.I of Police, who filed the final report filed -Held: The final Report is liable to be quashed.*

12. *Section 13(1) of the Code says that a Special Officer appointed by or on behalf of the Government for dealing with offences under this Act in the specified area has the power to investigate. No doubt that the expression, dealing with offences would according to its ordinary meaning includes the stages of investigation, inquiry and trial but specifically mentions that the special officer appointed by the State Government has the power for such investigation. Therefore, it means that Section 13(1) makes it clear that the investigation shall be made only by the notified special officer. When Parliament intend and explain in Section 13(1) of the Act, the importance of a special officer and empowering him to deal with the offences under the Act, it intends to confer power upon him to investigate the offences under the Act.*



Therefore, a police officer not notified by the State Government has no power to conduct the investigation. In *Re Kuppammal's case* (MANU/TN/0224/1959 : AIR 1959 Mad 389) (*supra*) (page 390, para.5) Lordships of the Supreme Court in *N.H.Rishbud and Indersingh v. State of Delhi* MANU/SC/0049/1954 : (AIR 1955 SC 196 : 1955 SCR 1150) held that, "when the breach of such a mandatory provision is brought to the knowledge of the court at a sufficiently early stage, the court while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstance of an individual case may call for." The learned Magistrate failed to rectify the illegality when such illegality brought to his notice. Therefore, this Court is bound to rectify the illegality by ordering a re-investigation by the special officer. 14. I have considered all the decisions relied on by the learned Counsel appearing for the petitioner. It is clear from the various provisions of the Immoral Traffic (Prevention) Act, 1956 which itself shows as a complete code with respect to what is to be done in a case. The entire police duties in connection with the purpose of the Act within the notified area have been under the supervision and charge of a special police officer. In Section 2(1), the expression 'police duty' also includes all the offences in connection with the purpose of the Act which entrusts special officer for detection, prevention and investigation of offences under the Act. A non empowered officer without conferring any power under the Act has no power to investigate or detect or prevent such acts which is clear in Section 14. However, any special officer can seek assistance of a police officer under him which does not mean that the Assistant police officers are competent to investigate the offence, since they are not specially appointed by the Statute. Considering that legal aspect, the investigation conducted by the S.I of Police, Keezhvaipur is invalid according to the Act and the Annexure-II final report submitted by him is not in accordance with law. If that be so, a trial based upon the charge is a mere abuse of process of court. Therefore, this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C.

In the result, I allow the petition and quash the final report in Crime No.526/2010 of the Keezhvaipur Police Station and cognizance taken in CC.No.136 of 2011 by the Judicial First Class Magistrate, Thiruvalla. However, it is made clear that quashing of the final report and cognizance taken will not be a bar for the authorised special officer within the meaning of Sec.13(1) of the Act to re-investigate the case again and file a charge sheet. If any fresh charge sheet is filed by the special officer the court will proceed with the charge sheet by taking cognizance of the offence, the 'plea of Autre fois acquit' will not be available to the Accused, since I am not acquitting the Accused.



This petition is allowed.”

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12. In *Delhi Administration -vs- Ram Singh* reported in (1962) 2

SCR 694 : AIR 1962 SC 63 : (1962) 1 Cri LJ 106 the Hon'ble Supreme Court

has observed as follows:

“34. The High Court of Punjab as well as the High Court of Madras have held not only that Section 13(1) of the Act confers power upon special police officer to investigate in to an offence under the Act but that the power conferred is exclusive. I am unable to appreciate how even assuming tat the words “deal with offences” confer upon a special officer the power to investigate into offence under the Act and present a charge-sheet, the powers of an officer in charge of a station house within whose jurisdiction an offence under the Act has been committed are excluded. There is not a whisper in Section 13(1) of the Act of the exclusion of the powers of an officer in charge of a police station. It is suggested that unless it is so held a confusion will result because the special police officer as well as the officer in charge of a police station will each exercise his power to investigate into an offence under the Act.

I do not think that there would be a danger of such simultaneous exercise of the power to investigate by two officers. The offence will have to be registered at the police station within the limits of the jurisdiction of which the offence has taken place. Thereafter it would be investigated into by the officer at whose instance it was registered. If that officer happens to be a station house officer the special police officer may take out the investigation from his hands or allow him to continue it. If the offence is registered at the instance of the special police officer, the station house officer would be bound to know of it from the station house records and would stay his hands.”

13. By placing reliance on the aforesaid decisions, it is submitted by the learned Counsel for the Appellant that by virtue of the Government Order passed by the State of Tamil Nadu, mentioned supra, the Inspectors of Police are duly empowered to investigate the cases filed under the Immoral Traffic (Prevention) Act, 1956. The learned Judicial Magistrate, by adopting



technicalities and without considering the entirety of the Judgment of the Kerala High Court, mentioned supra, had erroneously acquitted the Accused-1 and Accused-2 and it warrants interference by this Court. Accordingly, the learned Counsel for the Appellant prayed for allowing this Appeal.

14. The learned Additional Public Prosecutor Mrs.G.V.Kasthuri, appearing for the State also supported the contention of the learned Counsel for the Appellant/*De facto Complainant* and submitted that the Accused-1 filed W.P. No 7117 of 2010 before this High Court challenging the order dated 31.10.2009 passed by the Sub-Collector, Mettur, sealing the premises in question. The Writ Petition was filed to quash the proceedings dated 31.10.2009 of the first Respondent therein – Sub-Collector, Mettur and to direct the Respondents to unseal the premises bearing Door No. 17/1A-23, Cauvery Nagar, Mettur and to handover the possession of the same to the Petitioner. The said Writ Petition was dismissed by this Court on 12.11.2010. The learned Additional Public Prosecutor relied upon Paragraphs Nos. 13 to 16 of the order dated 12.11.2010, wherein it was observed as follows:

“13. Learned Counsel referred to Paragraph 13 of the judgment reported in AIR 1968 SC 1 and the same is extracted as follows:

“From the copies of the reports made in these cases to the Magistrate by the police – made available to us at the hearing of these appeals – it is clear that they disclose offences under Section 3 against the respondents. Therefore, the question is whether the Magistrate can choose to ignore the



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cognizable offence complained of and merely have recourse to Section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases like those before us the Magistrate who is also a court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in the Sections 3 and 7 as the case may be, and only after the disposal of those cases take action under Section 18 if there is occasion for it. Under Section 190(1) (b) of the Code of Criminal Procedure, the Magistrate is bound to take cognizance of any cognizable offence brought to his notice. The words “may take cognizance” in the context means “must take cognizance”. He has no discretion in the matter, otherwise that section will be violative of Article 14. But as laid down in Delhi Administration v. Ram Singh, only an officer mentioned in Section 13 can validly investigate an offence under the Act. Hence if the cases before us had been investigated by such an officer, there is no difficulty for the Magistrate to take cognizance of those cases. Otherwise it is open to him to direct fresh investigations by competent police officers before deciding whether the facts placed before him disclose any cognizable offence”.

Relying upon the said judgment, the learned Counsel submitted without conviction under Section 3 or 7 of the Act, there must not be any proceedings under Section 18 of the Act. However the constitution Bench Judgment in Paragraphs 11 and 12 explained about the difference in respect of the action under Sections 3 and 7 and 18 of the Act. Paragraphs “11 and 12 are extracted as follows:

11. Sections 3 and 7 provide for the punishment of persons guilty of the offenses mentioned therein. Any contravention of the provisions mentioned therein amounts to a cognizable offence in view of Section 14, whereas a proceeding under Section 18 is in no sense a Prosecution, it is a preventive measure, it is intended to minimise the chance of a brothel being run or prostitution being carried on in premises near about public places. Naturally, in the case of Prosecutions, a regular trial with a right of appeal is provided for. The enquiry contemplated by Section 18 is summary in character.



12. The attachment contemplated by that section can ensure only for a period of one year. Under these circumstances evidently the legislature thought that a regular trial and an appeal against the order of the Magistrate is not called for. In these cases it is necessary for us to spell out the scope of the expression “hearing” found in Section 18. It is unnecessary for us to spell out the scope of the expression “hearing” found in Section 18. it is necessary to remember that Sections 3 and 7 deal with persons guilty of offenses whereas Section 18 deals with the premises mentioned therein. It is not correct to say that the set of facts to be proved in Prosecutions under Sections 3 and 7 and in proceedings under Section 18 are identical. In the former the Prosecution to succeed has to establish either the intention or knowledge referred to therein but in the latter they are not necessary ingredients. Section 18 provides for two classes of cases namely, (1) those coming only under Section 18. They are two distinct classes of cases – a classification which has reasonable relationship with the object sought to be achieved and therefore falls outside the rule laid down by this Court in *Answar Alil Sarkar Case*”.

14. The aforesaid judgment declares that proceedings under Section 18 is no Prosecution and only a preventive measure to minimize the chance of brothel being run in the premises near public place and the enquiry under Section 18 is only for the period of one year. The said judgement points out the Prosecution is contemplated under Sections 3 and 7 against the person. Whereas Section 18 deals with the premises. Therefore it cannot be said that only after invocation of Sections 3 and 7, proceedings under Section 18 can be taken.

15. Another judgment of the Hon'ble Supreme Court in *Chitan J. Vaswani and another vs. State of West Bengal and another* reported in (1975) 2 SCC 829 deals with Section 18 of the Act.

Paragraphs 7 and 12 reads as follows:

“7. Section 18(1) proprio vigore applies only to brothels within the vicious distance of 200 yards of specified types of public institutions. No criminal Prosecution or conviction is necessary for taking action under Section 18(1). Strictly speaking this is not a punitive provision but a preventive one. This power vested in the magistrate is calculated to ensure moral hygiene in the locality which is particularly sensitive. If one may say so, it is moral scavenging



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operation, or a fumigation process whereby the dangerous visitations may be totally inhibited by a legally enforced closure...

12. This Court in Sub-Divisional Magistrate V.Ram Kali held that Section 18(1) deals with one class and Section 18(2) relates to another class. Section 18 (1) is a summary procedure for closing down obnoxious places of prostitution, without going through the detailed process of a criminal Prosecution. It is a quick-acting defensive mechanism, calculated to extinguish the brothel and promote immediate moral sanitation, having regard to the social susceptibility of places like shrines, schools, hostels, hospitals and the like. Section 18(2) on the other hand operates only where persons have been convicted of offenses under Section 3 or Section 7. Thus the place is found to be put to prostitutional use in a criminal trial. It stands to reason that if the purpose of extirpating the commercial vice from that venue were to be successful, the occupier must be expelled there from. This is precisely what has been done in the present case. Section 18(2) operates not merely on places within the offending distance of 200 yards but in all places where the activity of prostitution has been conducted”.

16. Therefore, the above judgment would make it very clear that the order under Section 18(1) is summary and only preventive in nature. The order is not in violation of the judgment of the Apex Court reported in AIR 1969 SC 1. Moreover the order has been passed only in the public interest as per law. It is seen from the evidence available that the petitioner involved in immoral act. Therefore no leniency could be shown to the petitioner. Accordingly the petition is dismissed. There will be no order as to costs. Consequently the connected M.P.No.1 and 2 are closed.”

15. According to the learned Additional Public Prosecutor, the order dated 12.11.2010 was not brought to the notice of the learned Judicial Magistrate No.I, Mettur while passing the Judgment of acquittal dated 31.12.2015. Further, as per the G.O. Ms. No. 618, Social Welfare Department, dated 13.04.1987, the State Government had conferred powers of the Special

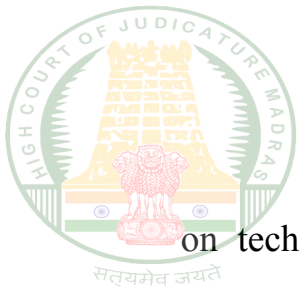


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Police Officers under the Immoral Traffic (Prevention) Act, 1956 to all the Police Officers in the State working in the respective Police Stations not below the rank of Sub-Inspector of Police to investigate offences under the Prevention of Immoral Traffic (Prevention) Act, 1956. Therefore, the Judgment of acquittal passed by the learned Judicial Magistrate No.I, Mettur is liable to be interfered with by this Court.

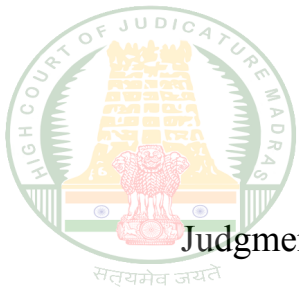
16. By pointing out the Judgment of the High Court of Kerala relied on by the Counsel for the *De facto Complainant/Appellant*, it is submitted by the learned Additional Government Pleader appearing for the State that unlike in Kerala, in Tamil Nadu, the Government of Tamil Nadu had issued G.O.Ms. No.618, Social Welfare Department, dated 13.04.1987 conferring the powers of the Special Police Officers and all the Police Officers in the respective Police Stations as Special Police Officers under the Immoral Traffic (Prevention) Act, 1956. Therefore, the ruling of the High Court of Kerala will not apply to State of Tamil Nadu regarding this particular case. The learned Judicial Magistrate-I, Mettur misdirected himself by placing reliance on the said Judgment of the Kerala High Court to pass the Judgment of acquittal in this case. Therefore, the learned Additional Public Prosecutor submitted that the learned Judicial Magistrate-I, Mettur had on proper appreciation of evidence arrived at a conclusion that the Prosecution had proved the charge but



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on technicalities acquitted the Accused without proper appreciation of the Judgment of the High Court of Kerala and without referring to G.O. Ms. No. 618, Social Welfare Department, dated 13.04.1987. Therefore, the learned Additional public Prosecutor seeks to set aside the judgment of acquittal recorded by the learned Judicial Magistrate-I, Mettur.

17. Mr. C. Venkatesan, learned Legal Aid Counsel appearing for the second Respondent in this Appeal vehemently objected to the line of arguments of the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State and submitted that there was a civil dispute between the Appellant herein and Poongodi/Respondent-2. Therefore, at the instigation of the Appellant and other Residents, false complaints have been preferred as if the second Respondent had been resorting to immoral activities in her house. It was also made as if P.W-2 was engaged by the second Respondent herein for brothel. However, during trial, P.W-2 clearly stated that she did not know the Accused in this case and she was threatened by the Police Officials to depose in this case. Further, the *De facto Complainant* said to have accompanied by his friend Kannan. who had written the complaint under Ex.P-1 in this case, was not even examined. Therefore, by referring to the serious flaws committed in this case by the Prosecution, the learned Judicial Magistrate No.I, Mettur has recorded a judgment of acquittal. When once a



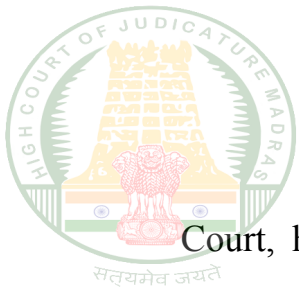
Judgment of Acquittal is recorded by the Trial Court, after weighing the oral and documentary evidence, this Court, as an Appellate Court, must be slow and to adopt restraint to interfere with such a Judgment. In any event, there are several infirmities in the case projected by the Prosecution and by pointing out the same, the learned Judicial Magistrate-I, Mettur has passed the Judgment of acquittal. Therefore, the learned Counsel for the second Respondent submitted that this Appeal lacks merit and it has to be dismissed.

Point for consideration:

Whether the judgment of acquittal recorded by the learned Judicial Magistrate-I, Mettur in C.C.No.65 of 2010, dated 31.12.2015, is to be set aside as perverse?

18. Heard Mr. PA. Kadirvel, learned Counsel for the Appellant, Mrs.G.V.Kasthuri, learned Additional Public Prosecutor for the first respondent/State and Mr. C. Venkatesan, learned Counsel for the first Accused/Respondent-2 and perused the judgment of the learned Judicial Magistrate-I Mettur in C.C.No. 65 of 2010, dated 31.12.2015. Perused the evidence of P.W-1 to P.W-10 and the documents Ex.P-1 to Ex.P-7.

19. On perusal of the evidence, it is found that the learned Judicial Magistrate-I, Mettur without proper analysis of the decision of the Kerala High

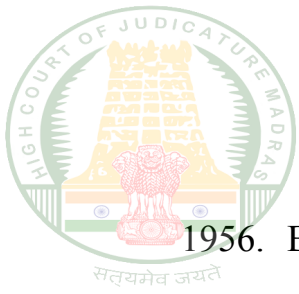


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Court, has held that P,W-9 and P.W-10 in this case are not empowered to conduct the investigation at all under the provisions of the Immoral Traffic (Prevention) Act, 1956. The learned Judicial Magistrate-I, Mettur had read the Judgment of the Kerala High Court in isolation without fully going through the spirit with which the said Judgment was delivered. Though it was held by the Kerala High Court that the final report filed by an Officer, who is not competent to investigate the case under the Act is quashed, it was however held in the penultimate portion of the decision as follows:-

“In the result, I allow the petition and quash the final report in Crime No.526 of 2010 of the Keezhvaipur Police Station and cognisance taken in C.C. No. 136 of 2011 by the Judicial First Class Magistrate, Thiruvalla. However, it is made clear that quashing of the final report and cognisance taken will not be a bar for the authorised Special Officer, within the meaning of Section 13 (1) of the Act to re-investigate the case again and file a charge sheet. If any fresh charge sheet is filed, by the Special Officer, the Court will proceed with the Charge-sheet by taking cognisance of the offence, the 'plea of autrefois acquit' will not be available to the Accused, since I am not acquitting the Accused.”

20. The aforesaid observation of the Kerala High Court was omitted to be considered by the Judicial Magistrate-I, Mettur while passing the Judgment of Acquittal in this case. Even otherwise, as far as the State of Tamil Nadu is concerned, the Government has issued G.O. Ms. No. 618, Social Welfare Department, dated 13.04.1987 conferring the powers of the Special Police Officers and all the Police Officers in the respective Police Stations in the State as Special Police officers under the Immoral Traffic (Prevention) Act,



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1956. By virtue of such G.O. Ms. No. 618, Social Welfare Department, dated 13.04.1987, the Judgment of acquittal passed by the learned Judicial Magistrate-I, Mettur, acquitting the Accused-1 and Accused-2 in this case, cannot be sustained.

21. It is seen from the records that the Investigation Officer in this case has recommended to the Sub-Collector, Mettur to pass appropriate orders to seal the premises used for carrying out immoral activities by the first Accused. Accepting such proposal, the Sub-Collector, Mettur, passed an order in her proceedings M.C.No.151/2009 (D), dated 31.10.2009 based on which the premises of the first Accused/second Respondent herein was sealed. Challenging the same, the first Accused/second Respondent herein filed W.P. No. 7117 of 2010 before this Court with a consequential prayer to de-seal the premises. The said Writ Petition No. 7117 of 2010 was dismissed by this Court on 12.11.2010 after elaborate discussion. However, the order passed by this Court in the Writ Petition filed by the first Accused/second Respondent herein, appears to have not been brought to the notice of the learned Judicial Magistrate No.I, Mettur. In the order dated 12.11.2010, the complaint given by the general public alleging that the house of the first Accused/second Respondent was used for carrying immoral activities was brought out. Had the order dated 12.11.2010 was brought to the notice of the learned Judicial



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Magistrate No.I, Mettur, the Judgment of Acquittal would not have been passed by the learned Judicial Magistrate-I, Mettur.

22. Now, turning to the flaws committed by the Prosecution, the *De facto Complainant* has deposed that after the Accused attempted to lure him to come to the brothel house to indulge in immoral activities, he went to the house of his friend Mr. Kannan and informed him. Thereafter, both the *De facto Complainant* and Mr. Kannan went to the Police Station, where a complaint was written by the said Kannan. However, for the reasons best known, the said Kannan was not examined as a witness in the criminal trial. There is no explanation forthcoming as to why the said Kannan was not examined to fortify the case of the Prosecution as against the Accused. This is one of the flaws committed by the Prosecution in conducting the criminal trial as against the Accused. It is presumed that the Police Officials wantonly did not examine the so-called witness Mr. Kannan who is supposed to have supported the case of the *De facto Complainant*. It appears that this was wantonly made to weaken the case of the Prosecution.

23. The next flaw committed by the Prosecution is that Saritha, who was examined during trial as P.W-2 has deposed against the Prosecution. It is her contention that she do not know who the Accused are. She also testified



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that she was coerced and compelled by the Police to sign certain documents and unless she depose before the Court, she will not be spared. However, inspite of such statement of P.W-2, the Assistant Public Prosecutor who appeared in this case did not seek to treat the deposition of P.W-2 as hostile. P.W-2 is the Victim of Prostitution as it was alleged that she was engaged by the Accused-1. However, because of fear, she had not supported the Prosecution case. This was also pointed out by the learned Judicial Magistrate No.I, Mettur while passing the judgment of acquittal. When a witness did not elicit favourable answer or his or her answer tends to derail the criminal trial, the Assistant Public Prosecutor, in his wisdom, has to seek the Court to treat such witness as a hostile. In the present case, P.W-2 was not treated as hostile witness even though her deposition is not reliable or it is not in support of the case projected by the Prosecution as against the Accused in this case. This is yet another flaw committed by the Prosecution which had the tendency to weaken the case of the Prosecution.

24. The conduct of the learned Assistant Public Prosecutor before the learned Judicial Magistrate-I, Mettur is found unusual. When a witness turned hostile, it is for him to request the Court concerned to treat her as hostile. It is Surprising to know that the Investigation Officer in this case also did not instruct the learned Assistant Public Prosecutor to seek for treating P.W-2 as



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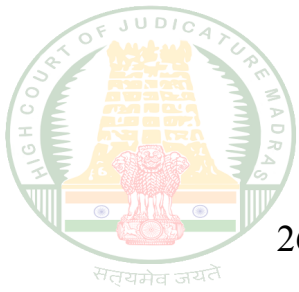
hostile. Similarly, the conduct of the learned Assistant Public Prosecutor of the Court of the learned Judicial Magistrate-I during the trial period also is to be probed for remaining indifferent during trial and not placing the Government Order mentioned above before the learned Judicial Magistrate-I, Mettur, which led to the Judgment of acquittal to be passed in this case. They had, by their unusual conduct, not helped the Prosecution to prove the guilt of the Accused beyond reasonable doubt. Further, after acquittal, the Prosecution did not prefer any Appeal against the acquittal. This forced the *De facto Complainant* to approach this Court with this appeal. The trial in this case commenced on 08.07.2010 and concluded on 31.12.2015. The Investigation Officer concerned during the relevant period as well as the Assistant Public Prosecutor of the Judicial Magistrate-I, Mettur, have to be enquired by the Higher Officials of the Police Department or the Department of Prosecution, as the case may be. The Director General of Police, State of Tamil Nadu Police and Head of State Police force is required to probe the conduct of the Investigation Officer, who served in Mettur Town Police Station between 18.05.2010 and 31.12.2015 to ensure that similar lapses did not occur in conduct of criminal trial. This is necessary because when the Criminal case in C.C. No. 65 of 2010 was pending trial, the Accused-1 had the audacity to move this Court by filing W.P. 7117 of 2010 to set aside the order of the Executive Magistrate/Sub-Collector, Mettur, passed under Section 18 of Immoral Traffic



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(Prevention) Act, 1956, ordering to seal the premises of the first Accused used for immoral acts. Such an order was passed based on the various complaints given by the neighbours and general public. The Writ Petition was dismissed after hearing the arguments of the learned Counsel for the Writ Petitioner, who is the Accused-1 in this case. The order passed by this Court in the Writ Petition could have been used by the Prosecution in their favour to strengthen the case of the Prosecution, but that was not done. The Prosecution ought to have marked the copy of the order dated 12.11.2010 in W.P. No. 7117 of 2010 as one of the documents in this case, but no such steps were taken. Further, the Order in the Writ Petition was passed on 12.11.2010. However, it is seen that the copy of the order dated 12.11.2010 was not marked to the learned Judicial Magistrate-I, Mettur. Thus, the aforesaid reasons has led to the passing of a Judgment of acquittal in this case.

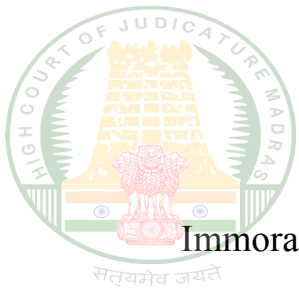
25. In all other respect, the deposition of P.W-1, P.W-3 to P.W-10 supported the case of the Prosecution. However, the learned Judicial Magistrate-I, Mettur was carried away by the fact that the learned Additional Public Prosecutor had not treated P.W-2 as a hostile. It was also observed that Mr. Kannan, said to have accompanied P.W-1 to the police station and who had written the complaint, was not examined during trial.



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26. The charge against the Accused-1 before the learned Judicial Magistrate-I, Mettur is that she alleged to have been indulged in prostitution in which she had used P.W-2 as a prey. The defence of the first Accused is that she is the wife of serving Head Constable of Police and due to previous enmity, a false complaint has been given against her. However, the defence did not examine any witness on their side or marked document.

27. On perusal of the Judgment, it is found that all those witnesses, who deposed before the Court had cogently supported the Prosecution case. The learned Judicial Magistrate No.I, Mettur also discussed it in Paragraph Nos. 21 to 32. However, in Paragraph 33, the learned Judicial Magistrate, Mettur accepted the submission of the defence under Section 13 of the Immoral Traffic (Prevention) Act, 1956 and held that powers of the Special Police Officers was not conferred on the Inspector of Police, Mettur Town Police Station to conduct investigation in this case and relied on the decision of the High Court of Kerala mentioned above, without reading the entire judgment of the High Court of Kerala. If the entire judgment of the Kerala High Court was considered by the learned Judicial Magistrate No.I, Mettur, the Judgment of Acquittal would not have been passed. Further, during the conclusion of the argument before this Court in this Criminal Appeal, the learned Counsel for the Appellant sought fresh investigation by the appropriate Authority under the



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Immoral Traffic (Prevention) Act, 1956.

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28. Considering the fact that the case in Crime No. 496 of 2009 was registered on 13.10.2009, the Judgment of acquittal was delivered in this case on 31.12.2015 and now 8 years passed, at this length of time, a fresh investigation in this case is not warranted. Instead this Court on the basis of the appreciation of evidence holds that the final conclusion arrived at by the learned Judicial Magistrate-I, Mettur in this case is perverse and the Appeal has to be allowed. In other words, this Court holds that the Prosecution has successfully proved the guilt of the Accused 1 and 2 in this case for having committed the offence under Section 3 (1) and 7 (a) of the Immoral Traffic (Prevention) Act, 1956.

29. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and against the Respondents. The judgment of acquittal recorded by the learned Judicial Magistrate-I, Mettur in C.C.No.65 of 2010, dated 31.12.2015, is found perverse and the same is to be set aside.

In the result, **this Criminal Appeal is allowed.** The Judgment dated

31.12.2015 passed in C.C. No. 65 of 2010 on the file of Judicial Magistrate-I,



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Mettur, is modified in respect of the acquittal of the Accused 1 and 2 holding that the Accused 1 and 2 are guilty of the offences punishable under Section 3 (1) and 7 (a) of the Immoral Traffic (Prevention) Act, 1956.

The learned Judicial Magistrate-I, Mettur is directed to hear the argument regarding sentence and to pass appropriate sentence as per the provisions of Immoral Traffic (Prevention) Act, 1956. The Accused shall be produced by the Inspector of Police, Mettur Town Police Station before the Court of the learned Judicial Magistrate-I, Mettur. If the Accused is found absconding, the Police shall issue look out Notice and proceed accordingly. The learned Judicial Magistrate-I, Mettur is directed to file the Compliance Report before this Court within a period of One month from the date of receipt of copy of this Judgment.

The Director General of Police, Tamil Nadu is directed to hold In-house enquiry regarding the conduct of the Inspectors of Police or the S.H.O of the Mettur Town Police Station, for having not properly conducted the criminal trial in this case. Further, the first Accused in this case is said to be the wife of a serving Head Constable. The Head Constable concerned shall also be enquired into to ascertain his role, if any, in the matter of conduct of immoral acts by his wife.



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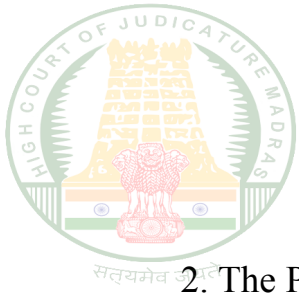
Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate-I

Mettur.

<https://www.mhc.tn.gov.in/judis>



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2. The Public Prosecutor,
High Court Madras,
Chennai – 600 104.

3. The Director General of Police
State of Tamil Nadu
Office at Santhome
Chennai – 600 004

SATHI KUMAR SUKUMARA KURUP, J

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Judgment made in
Crl.A. No. 499 of 2017

29.04.2024