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CrI.OP.No.21020 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.21020 of 2024

L.Jerome Santhosh

... Petitioner

Vs.

1. The Commissioner of Police,
O/o. The Commissioner of Police,
Vepery, Chennai 600 007.

2. The Assistant Commissioner of Police (Vepery Range)
Chennai 600 007.

3. The Inspector of Police,
G-1 Police Station Vepery,
Chennai 600 007.

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of Bhartiya
Nagarik Suraksha Sanhita, praying to direct the respondent not to harass
the petitioner based upon the representation.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (CrI. Side)



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ORDER

The petitioner herein who have the trade license for running a Restaurant under the name and style of “Coin Café Restaurant” at No.45/20, Mookathal Street, Purasawalkam, Chennai, is before this Court for direction to the respondent Police not to harass the petitioner and permit him to run the restaurant with a herbal hookah enclosure.

2. According to the petitioner, in his restaurant he has earmarked a smoking zone in which herbal hookah is provided. Having obtained permission from the Food Safety and Standards Authority, to run the restaurant, which is valid till 15.06.2025, the respondent Police cannot prohibit him from providing herbal hookah smoking facility in his restaurant. However, in spite of giving an under taking that he will not provide any tobacco hookah, the respondents are threatening the petitioner and closed down the shop.

3. The third respondent Police has filed the counter wherein it is stated that under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production,



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Supply and Distribution) Act, 2003 (hereinafter referred to as '*the COTPA Act*'), there is a prohibition of Hookah Bar and no persons can run any hookah bar or serve hookah to the customers in any place including a eating house. The petitioner herein was primarily running a hookah bar and therefore, he was instructed to close the shop as per the Government Order dated 18.10.2023. The petitioner filed writ Petition before the High Court challenging the said G.O. and the said Writ Petition in WP No.5853 of 2024 is pending. While so, there is no question of harassing the petitioner since he has already closed down the shop and awaiting for the outcome of the writ petition he has filed before this High Court.

4. The learned counsel appearing for the petitioner states that there is no ban or prohibition to run herbal hookah bar and what is prohibited in the above mentioned G.O. is only hookah bar using tobacco and the said G.O. was issued under the COTPA Act, which primarily deals with tobacco and tobacco products.

5. Relying upon the judgment of the Hon'ble Supreme Court in ***Narinder S. Chandha and others v. Municipal Corporation of Greater***



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Mumbai and others, reported in (2014) 15 SCC 689, the learned counsel appearing for the petitioner submitted that the power of the Police is only to regulate smoking and not to prohibit smoking. While smoking hookah with herbal products is not prohibited under any of the law of the land, citing provision and Government Order issued under the COTPA Act, the Police do not prohibit the petitioner having the separate enclosure for smoking herbal hookah.

6. From the rival submissions, it is clear that the petitioner has the restaurant licensed from the Authority and claims running herbal hookah bar is legal. Due to Police interference, he is not running the restaurant at present.

7. From the counter it appears that the petitioner was using the premises for running a hookah bar and whether he was using tobacco or any herbal other than tobacco is not available from the counter. In any event the amendment to Section 4(a) of COTPA Act, prohibits hookah bar in any place including eating house.



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8. The petitioner has given a letter of undertaking to the Commissioner of Police, Chennai that he may be permitted to run the restaurant in the name of “Coin Café Restaurant” with enclosed facility for herbal hookah service without any content or traces of tobacco and nicotine. This representation dated 08.08.2024 is sought to be considered by the respondent Police through this petition seeking Writ of Mandamus.

9. On considering the provisions of the COTPA Act and Food Safety and Standards Act, if the product used in the hookah is tobacco containing nicotine, it will fall under the COTPA Act. Otherwise also the inhalation of a smoke derived from any product other than tobacco containing nicotine, it will fall within the definition of food under Section 2 (za) of the Food Safety and Standards Act. Therefore, if at all the petitioner herein wants to have an enclosed zone for herbal hookah, first of all, he has to satisfy his trade not fall under the prohibition of Cigarettes and Other Tobacco Products in public places which includes restaurant.



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10. He cannot use tobacco or any product containing nicotine, in view of the prohibition under Section 4(A) of the COTPA Act, and in case if we want to use any other product other than product containing nicotine and claims it to be a herbal product, it must be in satisfaction with the provisions of Food Safety and Standards Act, 2006.

11. Therefore, as far as running the restaurant, there cannot be any legal impediment for the petitioner herein since he holds a valid license up to 31.03.2025. If he wants to establish a separate zone in his restaurant for herbal hookah bar, he should satisfy the requirements which is stated in paragraph Nos. 9 & 10 of this order.

12. Therefore, the petitioner herein has to make appropriate representation to the Food Safety and Standards Authority for the purpose of having a separate enclosure for herbal hookah and on obtaining permission he can have an herbal hookah bar in the said restaurant.



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13. The respondent Police shall have Authority to inspect the premises of the petitioner to ensure whether the running of the hookah bar is inconsonance with the permission granted by the Food Safety and Standards Authority and if there is any violation, it is open to the respondent Police to take necessary action.

14. With the above directions, the Criminal Original Petition is disposed of.

23.10.2024

Index: Yes/No

Internet: Yes/No

jv

To

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O/o. The Commissioner of Police,
Vepery, Chennai 600 007.
2. The Assistant Commissioner of Police (Vepery Range)
Chennai 600 007.
3. The Inspector of Police,
G-1 Police Station Vepery,
Chennai 600 007.
4. The Public Prosecutor,
Madras High Court, Chennai 600 104.



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Dr.G.JAYACHANDRAN,J.

jv

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