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W.A.No.457 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2024

PRONOUNCED ON : 18.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.A.No.457 of 2020

and

CMP.No.7025 of 2020

K.Natrajan

... Appellant

Vs.

1. Ms.KadekDwi Ani Rasmini
2. The Deputy Commissioner of Police,
Adyar Division,
LB Road, Chennai-600 020.
3. The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.
4. The Superintendent,
Government Vigilance Home,
16/27, Rosary Church Road,
Mylapore, Chennai-600 004.
5. The Manager,
Willows Spa,
38/B, 1st Avenue, Vettuvankeni, ECR,
Chennai-600 115.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set



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aside the order passed by this Hon'ble Court in WP.No.29995 of 2018 dated 02.01.2019.

For Appellant : Mr.S.Sirgethanainamohamed

For Respondents : Mr.V.B.R.Menon for R1
Mr.R.Muniyapparaj
APP for R2 & R4
Mr.S.John J.Rajasingh
AGP for R3

J U D G M E N T

[Judgment of the Court was made by **C.KUMARAPPAN, J.**]

The instant Writ Appeal is filed against the order dated 02.01.2019 passed in WP.No.29995 of 2018. It is pertinent to mention here that the above writ petition has been disposed of by a common order along with a batch of Criminal OPs.

2. The appellant is the first respondent before the Writ Court. The first respondent herein was the petitioner. The respondents 2 to 5 before the Writ Court, are arrayed on the same ranks before this Court.

3. The Writ petition No.29995 of 2018 has been filed by the first respondent herein praying to declare all the actions/proceeding against her pursuant to the registration of FIR No.1518 of 2018 dated 01.10.2018, and to



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direct the respondents 2 and 3 to adequately compensate the petitioner for the loss of personal liberty, loss of personal reputation, loss of job and for mental agony.

4. The brief facts which give rise to the instant Writ Appeal is that, the appellant at the relevant point of time was the Inspector of Police in J-8 Neelankarai Police Station. The first respondent is an Indonesian citizen and was working as a Massage Therapist in the 5th respondent's SPA. It appears that on 01.10.2018 the appellant raided the 5th respondent's SPA, on the apprehension that under the guise of SPA, they are running a brothel house. He also arrested the owner of the said SPA and has rescued the alleged victims which includes the first respondent.

5. It was the further submission of the first respondent herein that, she being the Indonesian national, by virtue of the Central Government Official Memorandum No.14051/14/2011-F.VI dated 01.05.2012, it becomes incumbent and mandatory upon the Investigating Officer qua the appellant herein to inform about the rescuing of the first respondent to the Indonesian Consulate. However, such mandatory requirement was not followed by the



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appellant herein. She further submits that she is a certified Therapist and has been doing massage therapy in India based on the work visa issued by the Government of India, and has also been paying Income Tax to the Government. It is the further contention of the first respondent that by the denigrative act of the appellant herein, she faces the ignominy, which constrained her to return to Indonesia.

6. Per contra, the learned counsel for the appellant would vehemently contend that, the appellant is the sincere Police Officer and that only upon the credible information, he *bona fidely raided the SPA* and has found that there were some illegal activities going on. It is the further contention of the appellant that, as a sincere police officer, he rescued the first respondent and relieved from the clutches of the accused. He further submits that, he took necessary initiative and emancipated the victim from the custody of the accused and made all arrangements for her safe stay, protection, care and custody. It is the further contention of the appellant that he has followed all the statutory, mandatory requirements while dealing with the foreign Nationals, and that he informed to the Indonesian Consulate. Therefore, vehemently contended that he never violated any of the provisions of law, and that had conducted himself *bona fidely*, that too based upon the credible



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information. Therefore, the learned counsel prayed to interfere with the order of the learned Single Judge, and would contend that the order of recovery passed by the learned Single Judge from the appellant is erroneous and prayed to set aside the same.

7. We have given our anxious consideration to either side submissions.

8. It is pertinent to mention here that the FIR registered by the appellant herein was subsequently quashed in connected Criminal OPs by common order passed along with the impugned WP.No.29995 of 2018. Admittedly, there are no records available as to the filing of the appeal against the above common order. Therefore, the order in the Criminal OP quashing the FIR No.1518 of 2018 dated 01.10.2018 reached its finality. Therefore, on the face of it, the action taken by the appellant was found to be illegal.

9. The learned Single Judge after tracing the history of introducing Immoral Traffic Act, in furtherance to UN convention, has found that, though the Act came into force with laudable object, the appellant has miserably failed to follow the mandatory provisions of Immoral Traffic Act. The learned Single Judge by referring the judgment in ***S.Rangaraj & Others Vs. The Commissioner of Police, Chennai City, Chennai-8 & others***



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reported in **2015 (1) LW 77** has arrived at a conclusion that, whenever a raid conducted under Section 15 of ITP Act, it must be done in accordance with law as mentioned infra. (i) the Investigating Officer must have reasonable grounds for believing that an offence punishable under this Act has been or is being committed, (ii) he must believe that such an offence is committed in respect of a person living in the premises, (iii) he should believe that the search of premises with warrant cannot be made without undue delay, (iv) he must record the grounds of his belief before entering the premises.

10. From the above ratio, therefore, there is no impediment for the Investigating Officer to enter upon any premises under the Immoral Traffic (Prevention) Act, 1956, provided, he ought to have record the grounds about his belief before entering the premises. The learned Single Judge has categorically found that there are no records to show as to the belief of Investigating Officer about the alleged commission of offence in the premises under the ITP act. The learned Single Judge has also found that, the mandatory vestige of taking two responsible persons while conducting search in the premises has also not been followed with. Apart from that, the learned Single Judge has also found the registration of FIR is in contravention to the provisions of ITP Act. Only on arriving the above conclusion, has ultimately



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quashed the impugned FIR.

11. Further, the writ Court has granted the compensation of Rs.2,50,000/- as a palliative to the first respondent against the unlawful act. This Court deems it appropriate to refer paragraph 33 in **Rangaraj's** case [cited supra]:-

“33. Unfortunately, no accountability is fixed on the police to see whether all the requirements of Section 15 are complied with or not. No one calls upon the Special Police Officer or the Trafficking Police Officer (i) to produce records to show whether he has minuted the grounds of his belief that an offence punishable under the Act is committed or has been committed in respect of a person living in any premises, (ii) to produce records to show his subjective satisfaction that the search of the premises with warrant cannot be made without undue delay, (iii) to produce records to show whether two respectable inhabitants of the locality attended and witnessed the search, (iv) to show whether persons removed from such premises were subjected to medical examination and produced before the appropriate Magistrate immediately, and (v) to produce proof to show that two women Police Officers accompanied them and the interrogation of any woman was done only by them.”

12. At this juncture, the learned Government Advocate would invite the attention of this Court in respect of G.O(Ms) No.800, Home (Pol.VII)



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Department dated 22.07.2019 by and in which the Government has already paid a sum of Rs.2,50,000/- to the first respondent and also directed the Director General of Police to recover the said amount of Rs.2,50,000/- in instalment @ Rs.5,000/- per month. The above Government Order has been passed in pursuance of the common order passed in the impugned writ petition and connected Criminal OPs. Admittedly, there is no challenge to the above Government Order.

13. At this juncture, Mr.V.B.R.Menon, learned counsel for the first respondent would invite the attention of this Court in respect of the final order passed in SLP(C) No.4859 of 2022 dated 06.11.2023. Wherein the appellant has in categorical terms informed to the Hon'ble Supreme Court of India that he would only challenge against the direction to pay Rs.2,50,000/- as compensation. Therefore, now the only point to be considered in the writ appeal is, whether the order of the learned Single Judge directing the Government to recover the compensation amount of Rs.2,50,000/- from the appellant is sustainable or not.



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14. Though the learned counsel for the appellant would contend that, the appellant is the saviour of the first respondent as he treated the first respondent as victim and has provided shelter, apparently as rightly found by the learned Single Judge, there are no material to show that under what circumstances and how the appellant came to the conclusion that the first respondent is a victim. It is pertinent to mention here that the learned Single Judge has also recorded that the case diary does not reveal about the mandatory procedures contemplated under the ITP Act. More particularly the compliance of Section 15 of the ITP Act. Further found that there is also no record about the non compliance of official Memorandum, Government of India, Ministry of Home Affairs (Foreigners Division) dated 01.05.2012.

15. Therefore, only in the background of above illegality committed by the appellant, the writ Court has imposed compensation as repressive measure in favour of the first respondent herein. It is settled principle of law that Article 21 of The Constitution of India, which deals with the protection of life and personal liberty is extended to “all persons” including “foreigners”. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in *Louis De Raedt v. Union of India* reported in (1991) 3 SCC 554.



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16. The first respondent, being the citizen of Indonesia and having valid work permit to work in India, only because of the unmindful act of the appellant, she was unlawfully confined for a period of 26 days and suffered a mental trauma and indelible ignominy. It is obvious that, persons, who knew about this incident would inexorably have negative perception against the first respondent. Therefore, only to emancipate the ignominy of the first respondent, as a succour this compensation was awarded. Further, for the illegalities of the appellant, public money cannot be spared.

17. Apart from that while awarding compensation, the learned Single Judge has also relied upon the judgment of the Hon'ble Supreme Court in ***S.Nambi Narayanan Vs. Siby Mathews & others etc.,*** in ***Crl.A.Nos.6637 & 6638 of 2018***. Wherein, the Hon'ble Supreme Court in paragraphs 34 & 35 held as under:-

“34. In Kiran Bedi V. Committee of Inquiry and another, this Court reproduced an observation from the decision in D.F.Marion V. Davis:

“25. ... The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.”



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35. Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two Judge Bench of this Court in Vishwanath Agrawal V. Sarla Vishwanath Agrawal has observed:-

“55. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.”

18. Therefore, the findings recorded by the Writ Court directing the appellant to pay a sum of Rs.2,50,000/- to the first respondent herein is the minimum repressive measure to come out from the opprobrium suffered by the first respondent and also to demonstrate the concern of this Nation towards the foreign citizen. Further, as already stated, for the specious investigation and denigrate act of the appellant, the public money cannot be spared as compensation, and if we permit the same, then it would set a wrong precedent. Therefore, this Court is of the firm view that there are no iota of grounds to interfere with the order of the learned Single Judge and the order of the learned Single Judge directing the appellant to pay the compensation is well merited and does not require any interference.

19. The another angle of this case is, the learned Single Judge has



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disposed of this writ petition by way of common order along with Criminal OPs. In the Criminal OP, the learned Single Judge has found that non-compliance of official Memorandum of the Ministry of External Affairs and also non-compliance of Section 15 of ITP Act is fatal, and such conduct resulted in quashing of FIR. At this juncture, the learned counsel appearing for the first respondent would vehemently contend that the very writ appeal is not maintainable under Section 15 of Letters Patent Act, as the order passed by the learned Single Judge is not by exercising the extraordinary jurisdiction under Article 226 of The Constitution of India, but only exercising the powers under Section 482 Cr.P.C. In this regard, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Ram Kishan Fauji Vs. State of Haryana and others*** reported in (2017) 5 SCC 533. For ready reference, the relevant portion of the judgment is extracted hereunder:-

“52. From the aforesaid analysis, it is demonstrable that the Gujarat High Court has opined that relying on the authority of this Court in Ishwarlal Bhagwandas [CIT v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818] , the issue whether the proceedings are civil or not would depend upon the nature of the right violated and the appropriate relief which might be claimed and not upon the nature of the tribunal which has been invested to grant relief. The Division Bench further opined that even if cognizance is not taken in respect of a criminal case, it would not



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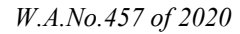
take out the case from the purview of criminal jurisdiction. Thus, it has been held by the Division Bench that when there is a proceeding under Article 226 of the Constitution arising from an order made by a Court in exercise of power under the Code of Criminal Procedure, it would be a criminal proceeding within the meaning of Letters Patent.

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56. *As we find from the decisions of the aforesaid three High Courts, it is evident that there is no disagreement or conflict on the principle that if an appeal is barred under Clause 10 or Clause 15 of the Letters Patent, as the case may be, no appeal will lie. The High Court of Andhra Pradesh, however, has held that when the power is exercised under Article 226 of the Constitution for quashing of a criminal proceeding, there is no exercise of criminal jurisdiction. It has distinguished the proceeding for quashing of the FIR under Section 482 CrPC and, in that context, has opined that from such an order, no appeal would lie. On the contrary, the High Courts of Gujarat and Delhi, on the basis of the law laid down by this Court in *Ishwarlal Bhagwandas [CIT v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818]*, **have laid emphasis on the seed of initiation of criminal proceeding, the consequence of a criminal proceeding and also the nature of relief sought before the Single Judge under Article 226 of the Constitution. The conception of “criminal jurisdiction” as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is***



(Emphasise supplied by this Court)

20. In the case on hand, though the writ petition was filed under Article 226 of The Constitution of India, it has been filed only in a criminal matter against the registration of FIR No.1518/2019 and that such writ petition has been disposed of by the High Court by way of common order along with other Criminal OPs by and in which, the FIR No.1518 of 2019 was quashed. Therefore, it is abundantly clear that WP No.29995 of 2018 has been filed on the seed of initiation of criminal proceedings. Therefore, as per the ratio of the Hon'ble Supreme Court in ***Ram Kishan Fauji*** [cited supra], no intra



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Court appeal is maintainable under The Letters Patent Act. Therefore, we are of the firm opinion that even otherwise the instant intra-Court writ appeal is not maintainable.

21. In the result, the writ appeal is dismissed. No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
18.07.2024

kmi

Index : Yes

Speaking order : Yes

Neutral Citation : Yes/No

To

1. The Deputy Commissioner of Police,
Adyar Division,
LB Road, Chennai-600 020.
2. The Secretary to Government of Tamil Nadu,
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and
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