



Crl.O.P.(MD)No.7986 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.7986 of 2022
and
Crl.M.P.(MD)No.5413 of 2022

1.Prabakaran

2.Aseer Chellaiah @ Asir Chelliah

... Petitioners

Vs.

1.The State rep.by
The Inspector of Police,
Thallakulam Police Station,
Madurai City.
(Crime No.1957 of 2016)

2.Subathra,
Sub Inspector of Police,
Thallakulam Police Station,
Madurai City.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No. 494 of 2019 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal as far as the petitioners are concerned.



WEB COPY



CrI.O.P.(MD)No.7986 of 2022

For Petitioners : Mr.K.Sivabalan,
for M/S. Pandi Rani.P

For R1 : Mr.B.Nambiselvan,
Additional Public Prosecutor.

For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.494 of 2019 on the file of the learned Judicial Magistrate No.II, Madurai.

2.The case of the prosecution is that on 24.09.2016, at about 15.00 hours, the second respondent, who is the Sub Inspector of Police attached with the first respondent Police Station, has conducted search with regard to the immoral trafficking at Surveryor Colony, Madurai. At that time, they found that A1 to A4 were indulged in prostitution and the petitioners herein, who were customers, also caught in the said house. Thereafter, a case in Cr.No.1957 of 2016 came to be registered for the



Crl.O.P.(MD)No.7986 of 2022

offences under Sections 3(2)(a), 4(2)(c), 5(1)(a) and 7(1)(a) of the Immoral Traffic (Prevention) Act, 1956. Upon completion of investigation, the first respondent police filed final report, which was taken on file in C.C.No.494 of 2019 by the learned Judicial Magistrate No.II, Madurai. Challenging the same, the present petition is filed.

3.The learned counsel appearing for the petitioners submitted that mere presence along with sex workers is not an offence and doing sex work is not illegal and only running a brothel is illegal. He further submitted that the sex workers are engaged in prostitution on their own volition and not due to any inducement, force or coercion and, therefore, such acts are not liable for prosecution under Section 370 IPC. In support of his contention he relied upon the decision of this Court in Udhaya Kumar Vs. State rep by the Inspector of Police, Anti-Vice Squad-II Police Station, Chennai CCB in Crl.O.P.No.10334 of 2022 dated 08.06.2022. Accordingly, he prayed to quash the impugned charge sheet.

4.The learned Additional Public Prosecutor appearing for the first respondent submitted that A1 to A4 were running brothel house illegally,



CrI.O.P.(MD)No.7986 of 2022

in which, the petitioners were present and accordingly, he prayed to dismiss the present petition.

5.It is seen that totally there are six accused in this case and the petitioners herein are arrayed as A5 and A6. The final report filed by the first respondent Police would indicate that the petitioners were present while sex workers were in the house. The final report does not show any offence committed by the petitioners, except for the alleged presence of the petitioners at the said place. There is no material to show that the petitioners were involved in any sexual act at the said place and that the persons, who have been rescued from the said place have made any allegation against any of the individuals, much less the petitioners.

6.Useful reference in this regard can be had to the decision of this Court Udhaya Kumar Vs. State rep by the Inspector of Police, Anti-Vice Squad-II Police Station, Chennai CCB in CrI.O.P.No.10334 of 2022 dated 08.06.2022, wherein this Court held as follows:-

8.In this backdrop, the decision of the Hon'ble Apex Court in BUDHADEV KARMASKAR Vs. THE STATE OF



WEST BENGAL & ORS (2022 Live Law (SC) 525), assumes significance, wherein, the Hon'ble Apex Court has held that whenever any brothel is raided, sex workers should not be arrested or penalised or harassed or victimised and it is only the running of the brothel, which is unlawful.

9.In the case on hand, merely because the petitioner was in the place, which is alleged by the respondents to be a brothel being run by some person, the petitioner cannot be fastened with any penal consequence and further, the act of the petitioner also cannot be said to be an act of pressurising the sex workers to commit acts, which they were not interested. From the aforesaid decision, any sex worker, being an adult and indulging in sexual act with his/her own consent, the police authorities should refrain from taking action against such individuals. From the facts, as is evident from the FIR and the alteration report, there is no whisper about any coercion on the sex workers to commit the act, more so from the petitioner. That being the case, the petitioner not being alleged to be a person coercing the sex worker to commit the sexual act, continuing the First Information Report against this petitioner is nothing but a futile exercise and would serve no purpose.

10.For the reasons aforesaid, this Criminal Original Petition is allowed and Crime No.9 of 2021, pending on the



Crl.O.P.(MD)No.7986 of 2022

file of the Inspector of Police, AntiVice Squad – II Police Station, insofar as the petitioner, who is arrayed as A-5 is quashed. Consequently, connected Crl.M.P.No.6140 of 2022 is closed.

7.The above said decision is squarely applicable to the present facts of the case. In view of the above, the impugned charge sheet in C.C.No.494 of 2019 pending on the file of the learned Judicial Magistrate No.II, Madurai, is hereby quashed. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

07.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gns



WEB COPY



CrI.O.P.(MD)No.7986 of 2022

To

- 1.The Judicial Magistrate No.II,
Madurai.
- 2.The Inspector of Police,
Thallakulam Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.O.P.(MD)No.7986 of 2022

M.DHANDAPANI,J.

gns

CrI.O.P.(MD)No.7986 of 2022

07.03.2024