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CrI.O.P.No. 8090 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.8090 of 2025 and
CrI.M.P.No.5272 of 2025

D.Prasanna

... Petitioner

Vs.

The State represented by
The Inspector of Police
Inspector of Police
Bagayam Police Station,
Vellore.
(Ref: Crime No.454/2024)

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to call the records and quash the First Information Report in Crime No.454 of 2024 on the file of the Inspector of Police, Bagayam Police Station, Vellore.

For Petitioner : Mr.S.Sheik Ismail

For Respondent : Mr.A.Gopinath,
Government Advocate (crl.side)



CrI.O.P.No. 8090 of 2025

WEB COPY

ORDER

This Criminal Original Petition has been filed challenging the First Information Report registered in Crime No. 454 of 2024 on the file of the respondent police, for the offences under Sections 3(1), 4(1) and 5(1)(a) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as “ITPA Act”).

2. The case of the prosecution is that the first accused (A1) was involved in carrying out prostitution. Based on credible information, the respondent police conducted a search, during which the petitioner was found at the scene of occurrence. Pursuant thereto, an FIR was registered in Crime No. 454 of 2024 for the offences under Sections 3(1), 4(1) and 5(1)(a) of ITPA Act.

3. The learned counsel for the petitioner would submit that according to the prosecution’s case, the petitioner was present at the scene of occurrence and went to the location in question as a customer at



CrI.O.P.No. 8090 of 2025

WEB COPY

a relative's house. However, it is submitted that, though the petitioner was found at the alleged brothel, no offence is made out against him. The petitioner contends that his presence at the scene was merely that of a customer, visiting the premises of his relative and not in connection with any illicit activity. It is further submitted that, even assuming the petitioner visited the premises as a customer, no offence is made out under Sections 3(1), 4(1), or 5(1)(a) of the ITPA Act. The learned counsel placed reliance upon the following provisions which reads as follows;

“3. PUNISHMENT FOR KEEPING A BROTHEL OR ALLOWING PREMISES TO BE USED AS A BROTHEL.

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.



WEB COPY



CrI.O.P.No. 8090 of 2025

4. PUNISHMENT FOR LIVING ON THE EARNINGS OF PROSTITUTION.

(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

5. PROCURING, INDUCING OR TAKING WOMAN OR GIRL FOR THE SAKE OF PROSTITUTION.

(1) Any person who-

(a) procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution; or shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees.”

4. Heard both sides and perused the material placed on record.

5. After carefully considering the submissions of both parties and examining the materials on record, it is apparent that the petitioner's presence at the scene of the alleged offence is not sufficient to make out



CrI.O.P.No. 8090 of 2025

WEB COPY

an offence under the provisions of the Immoral Traffic (Prevention) Act.

Even assuming, for the sake of argument, that the petitioner was a customer at the premises, there is no *prima-facie* evidence to show that the petitioner was involved in any of the unlawful activities specified under Sections 3(1), 4(1), or 5(1)(a) of the ITPA Act. It is well settled that mere presence at a location where illegal activities are taking place, without active involvement or participation in those activities, does not automatically result in criminal liability. In the absence of any evidence that the petitioner was engaged in the promotion or facilitation of prostitution or in the management of the brothel, the FIR cannot be sustained against the petitioner.

6. In view of the above, the FIR in Crime No.454 of 2024 on the file of the respondent is hereby quashed as against the petitioner alone. However, the respondent is directed to complete the investigation as against the other accused and file the final report within a period of twelve weeks from the date of receipt of a copy of this order.



Cr.I.O.P.No. 8090 of 2025

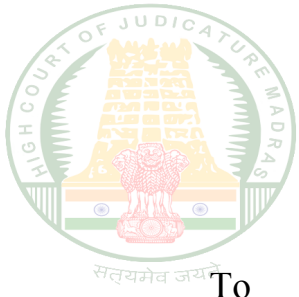
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7. Accordingly, this Criminal Original Petition stands allowed.

Consequently, connected miscellaneous petition is closed.

18.03.2025

Neutral citation : Yes/No
Speaking/non-speaking order
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CrI.O.P.No. 8090 of 2025

To
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1. The Inspector of Police
Inspector of Police
Bagayam Police Station,
Vellore.
2. The Public Prosecutor, High Court, Madras.



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CrI.O.P.No. 8090 of 2025

G.K.ILANTHIRAIYAN, J.

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CrI.O.P.No.8090 of 2025 and
CrI.M.P.No.5272 of 2025

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