



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21-08-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRL OP Nos. 22807 & 22808 of 2025

1. Fairoze

S/o. Anser Basha, Sole Proprietor (Mist
cafe and Restaurant) No.93, Murugesan
Naicker Complex, Greams Road,
Thousand Light, Chennai - 600006.

Petitioner in Crl.O.P.No.22807 of 2025

Jaffar Sadiq

S/o.Meeran, Sole Proprietor (DRIFT
CAFE and RESTAURANT) No.260,
Mount Casa Blanca, 1st Floor,
Thousand Light, Anna Salai,
Chennai - 600 006.

Petitioner in Crl.O.P.No.22808 of 2025

Vs

1. The Commissioner of Police -
Chennai City,
EVK Sampath Road, Vepery,
Periyamet, Chennai - 600007.

2.The Deputy Commissioner of Police,
(Triplicane Range), Chennai.



3. The Assistant Commissioner of
Police,
Nungambakkam Range

4. The Inspector of Police,
F-4, Thousand Lights Police Station,
Chennai.

Respondent(s) in both Crl.O.P.Nos.

PRAYER : Criminal Original Petitions filed under section 528 of BNSS to direct the respondents not to harass the petitioners and their staff in relation to the running of Herbas Hookah Services (without any content or trace of Tobacco and Nicotine) in the Restaurant premises namely Mist Cafe and Restaurant , No. 93, Murugesan Naicker Complex, 1st Floor, Greams Road, Thousand Light, Chennai, Tamil Nadu – 600006 and “Drift Cafe & Restaurant' No.260, Mount Casa Blanca, Ist floor, Thousand Light, Chennai, Tamilnadu – 600 006, in lieu of the order in the WP.No.27818/2023 dated 27.09.2023 and W.P.No.6503 of 2025 dated 24.02.2025

For Petitioner(s): Mr.V. Ramamurthy [in both Crl.O.Ps.

For Respondent(s): Mr.K.M.D.Muhilan
Additional Public Prosecutor
[in both Crl.O.Ps.

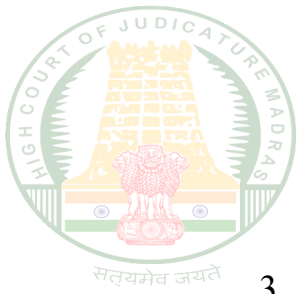


COMMON ORDER

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These Criminal Original Petitions have been filed to direct the respondents not to harass the petitioners and their staff in relation to the running of Herbals Hookah Services (without any content or trace of Tobacco and Nicotine) in the Restaurant premises namely their Mist Cafe and Restaurant and “Drift Cafe & Restaurant’ in lieu of the order in the WP.Nos.27818/2023 dated 27.09.2023 and 6503 of 2025, dated 24.02.2025 respectively.

2. The petitioners are running a restaurants under the name and style of Mist Cafe and Restaurant and “Drift Cafe & Restaurant’ respectively after obtaining required licenses. It is further stated that a separate earmarked smoking area has been provided for serving herbal flavour hookah without any content or trace of Tobacco or Nicotine. According to the petitioners, the respondents have been frequently interfering with the petitioners' business and have also directing to close the restaurant contending that the petitioners are selling tobacco products. Hence, the present petitions have been filed.



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3. The learned counsel appearing for the petitioners submitted that the petitioners have filed an Affidavit of Undertaking stating that no tobacco or nicotine products are used within the premises.

4. The learned Additional Public Prosecutor appearing for the respondents contended that the respondent Police have not caused any disturbance to the petitioners' business. However, since the respondents have liberty to conduct surprise inspections, when search was conducted in the petitioners' premises, during which, several tobacco products were seized including Royal Smoking Brand (Tobacco), AL Ayaan Brand (Tobacco), Royal Smoking Sheesa Molasses Black Colour and etc.. It is further contended that the petitioners are habitually indulging in such illegal activities.

6. In view of the above, though the learned counsel appearing for the petitioners submitted that the petitioners are not using any tobacco or nicotine products in the earmarked smoking area for serving herbal flavor hookah, the



fact remains that several cases have been registered against the petitioners.

Whether the so-called herbal products, as claimed by the petitioners, contain nicotine or not, can only be determined by experts and not by this Court. This Court cannot proceed merely on the basis of oral submissions.

7. It is the consistent stand of the respondents that they are not disturbing the petitioners in running their restaurant. If the petitioners are of the view that his products do not contain any tobacco or nicotine, it is for the petitioners to satisfy the competent Authorities particularly Food Safety and Standards Authority of India (FSSAI).

8. In this regard, by way of amendment brought by the State Government under L.A.Bill No.57 of 2022, Section 4A was introduced, which prohibits hookah bars. Therefore, whether the petitioners' hookah contains tobacco or not is an issue that has to be determined by the competent authority.

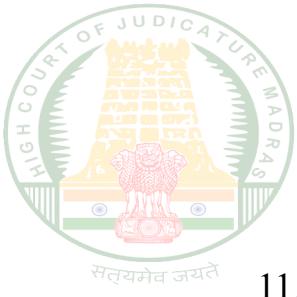
9. On considering the provisions of the Cigarettes and Other Tobacco



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Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 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 petitioners herein want to run an enclosed zone for herbal hookah, first of all, they have to satisfy that their trade is not in a public place which includes restaurant and does not fall under the prohibition of Cigarettes and Other Tobacco Products Act.

10. The petitioners 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 they 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.



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11. Accordingly, the petitioners are directed to approach FSSAI Authorities and place before them all the ingredients used in the preparation of hookah in their premises. The Food Safety Officer may draw samples and send them to a laboratory for testing. If it is satisfied that the products do not contain any tobacco or nicotine, the petitioners are at liberty to continue their business in respect of running of the hookah bar.

12. Insofar as the running of the restaurant is concerned, the respondent shall not interfere with the petitioners' business. However, it is made clear that the respondents Police are at liberty to take action if any illegal activities are found to be carried on in the petitioners' premises.

13. Accordingly, these Criminal Original Petitions stand disposed of with the aforesaid direction. No costs.

21-08-2025

Index: Yes/No



Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

- 1.The Commissioner of Police -
Chennai City, EVK Sampath Road,
Vepery, Periyamet, Chennai - 600007.
- 2.The Deputy Commissioner of Police,
(Triplicane Range), Chennai.
- 3.The Assistant Commissioner of Police,
Nungambakkam Range
- 4.The Inspector of Police,
F-4, Thousand Lights Police Station, Chennai.



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CRL OP Nos. 22807 & 22808 of 202



N.SATHISH KUMAR J.

vrc

CRL OP Nos. 22807 & 22808 of 2025

21-08-2025



Crl.O.P.Nos.22807 and 22808 of 2025

N.SATHISH KUMAR,J.

Today (19.09.2025), the matter is listed under the caption for being mentioned at the instance of the learned counsel for the petitioners.

2. The learned counsel for the petitioners submitted this Court was pleased to dispose of the present cases by order dated 21.08.2025 with certain directions to the respondents. However, in paragraph No.4 of the order, the facts of some other case has been inadvertently incorporated. Hence, he seeks for appropriate directions.

3. In view of the above, Registry is directed to remove the paragraph No.4 from the order in Crl.O.P.Nos.22807 and 22808 of 2025 dated 21.08.2025 and issue a fresh order copy after correcting the paragraph numbers.

19.09.2025

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Crl.O.P.Nos.22807 and 22808 of 2025

19.09.2025