



Crl.O.P.No.23188 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.23188 of 2025

S.Harichandran
Secretary,
M/s.Brindavanam Manamagizh Mandram,
No.50(150), Kodambakkam High Road,
Dr.MGR Salai, Nungambakkam,
Chennai – 34.

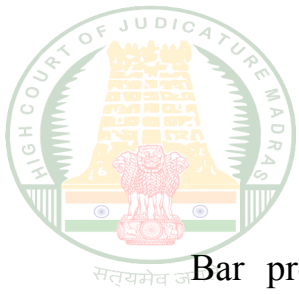
... Petitioner

Vs.

- 1.The Commissioner of Police,
Chennai City, Chennai – 600 007.
- 2.The Deputy Commissioner of Police (Triplicane Range)
Chennai.
- 3.The Assistant Commissioner of Police (Nungambakkam Range)
Chennai.
- 4.The Inspector of Police,
F-3 Police Station,
Nungambakkam, Chennai.

... Respondents

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita to direct the respondents not to harass the petitioner and their staff in relation to the running of their Restaurant cum



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Bar premise namely “The Thief” along with Herbal Hookah services (without any content or trace of Tobacco and Nicotine) at No.50 (150), Kodambakkam High Road, Dr.MGR Salai, Nungambakkam, Chennai – 600 034.

For Petitioner : M/s.S.Shanmitha

For Respondents : Mr.K.M.D.Muhilan,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to direct the respondents not to harass the petitioner and their staff in relation to the running of their Restaurant cum Bar premise namely “The Thief” along with Herbal Hookah services (without any content or trace of Tobacco and Nicotine) at No.50 (150), Kodambakkam High Road, Dr.MGR Salai, Nungambakkam, Chennai – 600 034.

2.It is the case of the petitioner that he is running a restaurant under the name and style of “The Thief” 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



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Nicotine. According to the petitioner, the respondents are frequently interfering with the petitioner's business and are also directing the petitioner to close down their restaurant contending that the petitioner is selling tobacco products. Hence, the present petition has been filed.

3.Learned counsel for the petitioner would submit that serving and smoking of herbal hookahs is not banned or prohibited under any law and the same is permissible. The learned counsel would also submit that the petitioner undertakes that no Tobacco or Nicotine products would be used within the subject premises.

4.Whereas, the learned Additional Public Prosecutor appearing for the respondents would submit that the respondents are not disturbing the petitioner's business, but they are only concerned about serving of Tobacco and Nicotine product by way of hookah bars. If the petitioner is of the view that their products do not contain any Tobacco or Nicotine, it is for the petitioner to satisfy the competent authorities, particularly the Food Safety and Standards Authority of India (FSSAI).



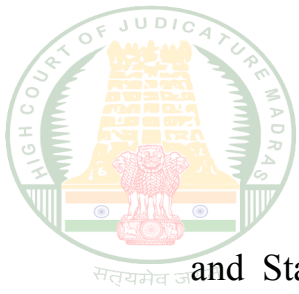
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5. Though the petitioner states that they are not using any Tobacco or Nicotine products in the earmarked smoking area for serving herbal flavour hookah, the question as to whether the so-called herbal products, as claimed by the petitioner, contain Tobacco or Nicotine or not, can only be determined by the experts and not by this Court. This Court cannot proceed merely on the basis of oral submissions.

6. It is relevant to note that, by way of amendment brought by the State Government under L.A. Bill No. 57 of 2022, Section 4-A was introduced to Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ("COTPA Act" for brevity), which prohibits hookah bars. Therefore, whether the petitioner's hookah contains Tobacco or Nicotine or not, is an issue that has to be determined by the competent authority.

7. On considering the provisions of the COTPA Act and Food Safety



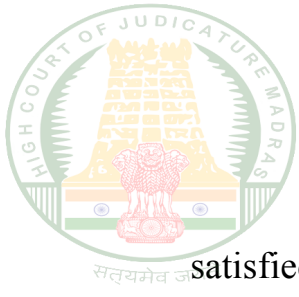
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and Standards Act, 2006, if the product used in the hookah is Tobacco containing Nicotine, it will fall under the COTPA Act. Further, the inhalation of smoke derived from any product other than Tobacco containing Nicotine, will also fall within the definition of “food” under Section 2(za) of the Food Safety and Standards Act. Therefore, if at all the petitioner wants to run an enclosed zone for herbal hookah, first of all, he has to satisfy that his trade is not in a public place which includes restaurant and does not fall within the prohibition under COTPA Act.

8.The petitioner 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 he wants to use any product other than that containing Nicotine and claims it to be a herbal product, the same must be in satisfaction with the provisions of Food Safety and Standards Act, 2006.

9.Therefore, the petitioner is directed to approach the FSSAI Authorities and place before them all the ingredients used in the preparation of hookah in the petitioner's premises. The Food Safety Officer may draw samples and send them to the laboratory for testing. If the authorities are



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satisfied that the products used by the petitioner in their hookah do not contain any Tobacco or Nicotine, the petitioner is at liberty to continue his business in respect of running of the hookah bar.

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

11.With the above directions, this Criminal Original Petition stands disposed of.

26.08.2025

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No



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- 5.The Public Prosecutor,
High Court, Madras.



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N. SATHISH KUMAR, J.

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