



Crl.O.P.No.27659 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2025

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.27659 of 2025

Rakesh Kumar

... Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai, Office of the Commissionerate,
EVK Sampath Road,
Vepery, Periyamet, Chennai – 600 007.
2. The Deputy Commissioner of Police (Triplicane Range),
Office of the Deputy Commissioner,
Chintadripet, Chennai – 600 002.
3. The Assistant Commissioner of Police (Nungambakkam Range),
Office of the Assistant Commissioner of Police,
Nungambakkam, Chennai – 600 034.
4. The Inspector of Police,
F-3 Nungambakkam Police Station,
Valluvarkottam High Road,
Nungambakkam, Chennai 600 006.

... Respondents



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PRAYER : Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita/Section 482 of Cr.P.C., to direct the fourth respondent not to harass petitioner nor his staff in the daily routine of the functioning of his restaurant name “J.K.Food Company” along with herbal hookah service without following due process of law.

For Petitioner : Mr.S.Sathish Kumar

For Respondents : Mr.R.Vinothraja
Government Advocate (Criminal Side)

ORDER

The present Criminal Original Petition has been filed seeking a direction to the fourth respondent not to harass the petitioner and interfere with the functioning of his restaurant in the name and style of “J.K. Food Company”.

2. The case of the petitioner is that he is running a restaurant under the name and style of “J.K. Food Company” at Door No.29, H.M.Centre,



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Nungambakkam High Road, Chennai – 60 034, after obtaining the required

licenses. It is his further case that a designated smoking area has been provided for serving herbal hookah without any content or trace of Tobacco or Nicotine. According to the petitioner, the respondent Police are frequently interfering with the petitioner's business and also directing the petitioner to close the restaurant contending that the petitioner is selling tobacco products. Hence, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the Hon'ble Apex Court, vide order dated 08.04.2014, in SLP(C) No.8143 of 2014 has held that serving and smoking of herbal hookah is not banned under any law and the same is permissible under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. He further submitted that similar kinds of issues have already been dealt with by this Court in W.P.Crl.No.560 of 2025 and in Crl.O.P.No.23188 of 2025, wherein,

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this Court directed the petitioners therein to approach the FSSAI Authorities

to prove that their products do not contain any tobacco and further directed the Police not to interfere with their business.

4. Learned Government Advocate (Criminal Side) appearing for the respondents filing the counter affidavit of the fourth respondent and on instructions, submitted that the respondent Police have not caused any disturbance to the petitioner's lawful business activities. However, since the petitioner's restaurant is surrounded by several educational institutions, they are only concerned about the serving of Tobacco and Nicotine products by way of hookah bars and the inspection was conducted to see whether any children are falling prey to the tobacco-related substances that are being sold at the petitioner's restaurant. He further submitted that if the petitioner is of the view that his 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. Heard both sides and perused the materials available on record.

6. This Court perused the earlier orders passed by this Court in respect of the similar issues and the relevant paragraphs of the order passed in CrI.O.P.No.27659 of 2025 dated 26.08.2025 are extracted hereunder :-

“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 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



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send them to the laboratory for testing. If the authorities are 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.”

7. The aforesaid decision is squarely applicable to the facts of the present case. Accordingly, applying the ratio laid down in the above case, this Criminal Original Petition stands disposed of with a direction to the petitioner to approach the FSSAI Authorities and place before them all the ingredients used in the preparation of herbal hookah in its premises and 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 petitioner is at liberty to continue his business in respect of

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running of the herbal hookah bar.

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8. Further, the respondent Police shall not interfere with the petitioner's business. However, it is made clear that the respondent Police are always at liberty to take action, if any illegal activities are found to be carried on in the petitioner's premises.

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Neutral Citation : Yes/No

To

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4. The Inspector of Police,
F-3 Nungambakkam Police Station,
Valluvarkottam High Road,
Nungambakkam, Chennai 600 006.

5. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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