



CRL.OP(MD) NO.12747 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. O.P(MD) No.12747 of 2024

and

CRL.M.P.(MD) No.7845 of 2024

S.Kumar

... Petitioner

Vs

1.The State rep. by
The Inspector of Police,
Ervadi Dharga Police Station,
Ramanathapuram district.
Crime No.42 of 2022.

2. Nagaraj

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to call for the records pertaining to the case in Crime No.42 of 2022 on the file of the Inspector of Police, Ervadi Dharga Police Station, Ramanathapuram and quash the same as against the petitioner.

For petitioner :Mr.R.Anand

For R1 : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)



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For R2 : Mr.N.Balasubramanian
for Mr.S.Ashok

ORDER

This petition is filed by the petitioner to quash the proceedings in FIR in Crime No.42 of 202 on the file of the first respondent.

2. The learned counsel for the petitioner would submit that the second respondent lodged a complaint against the petitioner and others before the first respondent. They registered the case in Crime No.42 of 2022 for the offences under Sections 3(1), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956.

3. As per prosecution case, the second respondent noted that some unknown persons often used to have entered into the house. When he was questioning the same, the first accused has not replied properly. While so, on 04.03.2022 at 8.00 p.m., the second respondent had seen two persons who are going inside the house of the first accused. Immediately, he rushed there with the team of village people and enquired and when they inspected the place, they came to know about the prostitution. In this case,



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the second respondent is not an authorised person as per Section 13 of Immoral Traffic (Prevention) Act, 1956. In fact, the provisions of 3(1), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956 would not attract for the customer. The second respondent has no *locus standi* to lodge the complaint. There are procedural violations of mandatory provisions under Sections 13 and 15 of Immoral Traffic (Prevention) Act, 1956. Therefore, as against the petitioner, the pending proceedings is liable to be quashed.

4. The learned Government Advocate (Crl.Side) for the first respondent would submit that based on the complaint lodged by the second respondent, the first respondent registered the case in Crime No.42 of 2022 for the offences under Sections 3(1), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956 and the petitioner was arrayed as second accused. Now, investigation is pending. At this stage, the investigation cannot be scuttled. Hence, the petition is liable to be dismissed.

5. This Court heard both sides and perused the records.

6. FIR has been registered in March 2022. So far, the first



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respondent has not filed Final Report and the investigation is still pending. Moreover, even as per the prosecution case, the petitioner is the customer for the brothel. Thereby, offence under Sections 3(1), 4(1) and 5(1)(a) of the Crime No.42 of 2022 for the offences under Sections 3(1), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956, would not attract.

7. The learned counsel for the petitioner also relied on the judgement of this Court in ***G.Arunkumar vs. State rep. by the Inspector of Police, Annadanapatty Police Station in Crl.O.P.No.23247 of 2021***, wherein this Court in para 8 held as follows:

“8.The sole ground on which the petitioner herein is arrayed as the accused in the above crime is that he was present at the spot during the raid, indicating that he was a customer who had gone to the brothel house. The provisions of the Immoral Traffic (Prevention) Act, 1956 invoked by the 1 st respondent Police do not get attracted against the petitioner on the facts and materials. Further, Section 3 of the ITP Act, 1956 pertains to keeping a brothel or allowing premises to be used as a brothel. Section 4 of the ITP Act, 1956 pertains to punishment for living on the earnings of prostitution. Section 5 of the ITP Act, 1956 refers to procuring, inducing or taking (person) for the sake



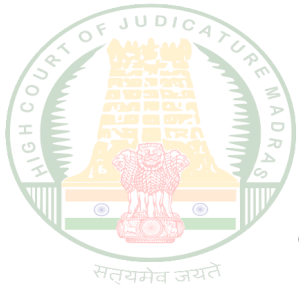
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of prostitution. Section 6 of the ITP Act, 1956 deals about detaining a person in the premises where prostitution is carried out. Section 7 deals with prostitution in or in the vicinity of public places. A person who visits brothel house only as a customer is not covered by any of the above provisions or any other provision of the ITP Act, 1956. The admitted case of the prosecution is that the petitioner/A3 was present when Police came for raid in a brothel home, nothing more.”

8. On careful perusal of the judgement, it is clear that a person, who arrayed as accused and who was present at the spot during the incident as customer, will not come under Sections 3, 4 and 5 of ITP Act. In the case on hand also, the petitioner is only mentioned as customer. Therefore, no offences are made out against the petitioner. Moreover, the second respondent was not an Authorised Officer and the search was not made in terms of Section 15 of ITP Act. Therefore, there are procedural violations. Moreover, the first respondent also has not completed investigation and the same is pending for more than three years. The case is pending from 2022. Therefore, the pending proceedings as against petitioner is liable to be quashed.



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9. Accordingly, this Criminal Original Petition is allowed and pending proceedings in Crime No.42 of 2022, on the file of the first respondent, is quashed as against this petitioner. Consequently, connected miscellaneous petition is closed.

29.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1. The Inspector of Police,
Ervadi Dharga Police Station,
Ramanathapuram district.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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P.DHANABAL,J

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