



Crl.O.P(MD)No.14176 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

**Crl.O.P(MD)No.14176 of 2024
and
Crl.M.P(MD)No.8785 of 2024**

Basha,

... Petitioner

Vs

The Inspector of Police,
Kundrakudi Police Station,
Sivagangai District.
Crime No.24 of 2024..

... Respondent

PRAYER: Criminal Original petition has been filed under Section 528 of BNSS to call for the records relating to the proceedings of in CC.No. 124 of 2024 on the file of the Learned Judicial Magistrate, Karaikudi, Sivagangai District and quash the same.

For Petitioner : Mr.J.Malai Raja
for M/s. Spicy Law Firm

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



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ORDER

This Criminal Original Petition has been filed seeking to quash the impugned proceedings in C.C.No.124 of 2024, on the file of the learned Judicial Magistrate, Karaikudi.

2.The case of the prosecution is that on 08.02.2024, A1 had taken the victims to the house of A2 for prostitution and thereby, they committed the offence under Sections 3(1), 3(2)(a), 4(1), 5(1)(a) and 6(1) (a) of Immoral Traffic (Prevention) Act, 1956 and Section 4(1)(a) of TN Prohibition Act. Therefore, the respondent has registered the FIR in Crime No.24 of 2024 for the above said offences committed by the petitioner and another. Now, the second accused/petitioner, has challenged the pending proceedings.

3.The learned Counsel for the petitioner would submit that the respondent has foisted a false case against the petitioner and another. No offence is made out against the petitioner. In fact, there was no any complaint from the alleged victims. The defacto complainant herself has

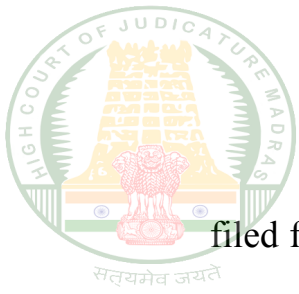


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registered the FIR by violating the Section 15 of the Immoral Traffic Act.

Even as per the prosecution, the petitioner was found in his guest house with two ladies for prostitution and also had four bottles of liquor and 15 bottles of beer. Therefore, registered the present FIR. In fact, on 08.02.2024, while the petitioner returned to his guest house, he asked the first accused to arrange house maids to clean the guest house, thereby, they entered into the guest house. At that time, the respondent police came there and foisted the false case and no any offences made out against the petitioner. In order to attract the provisions under Sections 3(1), 3(2)(a), 4(1), 5(1)(a) and 6(1)(a) of Immoral Traffic (Prevention) Act, 1956, there are no any allegations and no any materials even as per the FIR and the final report filed by the respondent. Therefore, the pending proceedings are liable to be quashed.

4.The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the petitioner along with A1 engaged in prostitution and thereby, they went to the place of occurrence and found the accused with two ladies and thereby, they enquired the victims they stated about the prostitution. Therefore, they registered the present FIR and thereafter, the respondent conducted investigation and

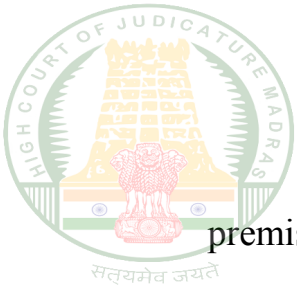


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filed final report and the same was taken cognizance by the trial Court in C.C.No.124 of 2024. As per the final report, there are *prima facie* materials available as against the petitioner. Therefore, it is a matter for trial and this petition is liable to be dismissed.

5.Heard both sides and perused the records.

6.The respondent registered case against the petitioner in Crime No.24 of 2024, for the offence under Sections 3(1), 3(2)(a), 4(1), 5(1)(a) and 6(1)(a) of Immoral Traffic (Prevention) Act, 1956 and Section 4(1) (a) of TN Prohibition Act and thereafter, the respondent conducted investigation and filed final report and the same was taken cognizance by the trial Court in C.C.No.124 of 2024 and the same is pending. This petitioner has been arrayed as A2 and the allegation against the petitioner is that he was found with two ladies in the guest house along with liquor bottles. Therefore, he has been charged for the above said offences. There are no allegations that the petitioner keeps or manages or acts or assists in keeping or management of a brothel. As far as the offence under Section 3(2)(a) of Immoral Traffic (Prevention) Act is concerned, the petitioner is not a tenant, lessee, occupier or person in charge of any



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premises, uses or knowingly allows any person to use, such premises for brothel. To attract the provision under Section 4(1) of Immoral Traffic (Prevention) Act, the petitioner has no any ingredient to show that the petitioner being aged over 18 years, knowingly lives, wholly or in part, on the earnings of the prostitution of any other person. As far as the offence under Section 5 of the said Act is concerned, there is no ingredient that the petitioner procure or attempted to procure the person for the purpose of prostitution or induced a person to go from any place with an intent for the purpose of prostitution become the inmate of or frequent brothel. As far as the offence under Section 6 of the said Act is concerned, there are no ingredients that the petitioner detained any person in a brothel. Therefore, there are no ingredients to constitute the above said offences. Even as per the FIR and the final report, the main allegation is that the petitioner found with two ladies in the guest house, which is not sufficient to constitute the offences. Even as per the FIR and the final report, no any other material except that the petitioner was found with two ladies. Therefore, there is no any offence made out against the petitioner.

7. At this juncture, the learned Counsel for the petitioner relied on



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the judgment of this Court in the case of ***G.Arun Kumar Vs. The State of Tamil nadu*** in ***Crl.O.P.No.23247 of 2021*** and also relied on the judgment of the Hon'ble Allahabad High Court-Lucknow Bench in the case of ***Dinesh Tiwari Vs. State of U.P and another.***

8.On careful perusal of the above said judgments, it is clear that on the sole ground, on which a party was arrayed as accused that he was present at the spot during the raid, indicating that he was a customer, who had gone to the brothel house would not attract the provisions under Sections 3, 5, 6 and 7 of ITP Act. As per Section 15 of ITP Act, it is mandatory that before making a search, the special officer or the trafficking police officer shall call upon two or more respectable inhabitants at least one shall be a woman of the locality, in which the place to be searched, to attend and witness the search and may issue an order in writing to them or any of them so to do.

9.In this case, the procedures contemplated under Section 15 of ITP Act have not been followed and no any local witnesses cited by the investigating officer during the search. Therefore, the pending proceedings are liable to be quashed.



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10. Accordingly, the impugned proceedings in C.C.No.124 of 2024, pending on the file of the learned Judicial Magistrate, Karaikudi is hereby quashed as against this petitioner and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

24.04.2025

Internet: Yes
Index : Yes/No
NCC : Yes/No
LR

To

1. The Judicial Magistrate,
Karaikudi,
Sivagangai District

2. The Inspector of Police,
Kundrakudi Police Station,
Sivagangai District.

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



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