



CrI.O.P.(MD)No.23159 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **18.12.2025**

CORAM:

THE HONOURABLE **MRS.JUSTICE L.VICTORIA GOWRI**

CrI.O.P.(MD)No.23159 of 2025

and

CrI.M.P.(MD).Nos.20068 and 20069 of 2025

1.Geetha @ Latha
2.Sivasubramanian @ Karthick ... Petitioners

Vs.

1.The State of Tamil Nadu Rep. by its,
The Inspector of Police,
All Women Police Station,
Srivilliputhur,
Virudhunagar.
(Crime No.5 of 2023)

2.Packia Mary ... Respondent

PRAYER : Petition filed under Section 528 of BNSS, 2023, to call for the entire records connected to the proceedings in C.C.No.47 of 2023 on the file of the learned Judicial Magistrate, Additional Mahila Court, Srivilliputhur, Virudhunagar District and quash the same as illegal as against the petitioners.

For Petitioners : Dr.R.Alagumani

For Respondent : Mr.P.Kottaichamy

Government Advocate (CrI. Side)

ORDER

This petition is filed to quash the proceedings in C.C.No.47 of 2023 on the file of the learned Judicial Magistrate, Additional Mahila Court, Srivilliputhur, Virudhunagar District.



Crl.O.P.(MD)No.23159 of 2025

2.The case of the prosecution is that on 27.02.2023, at about 02.00 p.m., based on the secret information received by the second respondent, the respondent police sent a search warrant to the concerned Jurisdictional Magistrate and went to the spot of the alleged brothel business and a thorough search was conducted. On enquiry and search, they found that the accused person was running the brothel business with one woman and also seized a sum of Rs.16,000/- from the accused person. Hence, the case.

3.The learned counsel appearing for the petitioners submitted that as far as the petitioners are concerned, they have not committed any offence as alleged by the prosecution. He further submitted that none of the mandatory provisions under the Immoral Traffic (Prevention) Act, 1956, has been followed while searching the premises and the case has been registered against the settled principles of law. He would further submit that the second respondent is not the authorised officer to conduct the investigation as contemplated under Section 13 of the Act. The arrest was also not done under the Act and while searching the premises, the procedures prescribed under Section 3 (1), 3(2)(b), 4(2)(a), 4(2)(c), 5(1)(a) and 5(1)(c) of Immoral Traffic (Prevention) Act, 1956, have been violated. Thus, he would pray to quash the impugned proceedings. The learned counsel in order to substantiate his



Crl.O.P.(MD)No.23159 of 2025

submissions, relied upon the order of this Court in the case of **Ganeshan Vs. State¹**, vide order dated 26.04.2024, in which, this Court held that since the inspection was not carried out by the Special Police Officer or the Trafficking Police Officer, and the officer who carried out the inspection was not authorised under Section 15 of the Immoral Traffic (Prevention) Act, 1956, the inspection was illegal. Therefore, the entire proceeding is vitiated and a clear abuse of process of law. Hence, he sought the indulgence of this Court to quash the proceedings against the petitioners.

4.Per contra, the learned Government Advocate (Crl. Side) Mr.M.Kottaichamy, submitted that as per the Government Order in G.O.Ms. No. 618, Social Welfare department, dated 13.04.1987, any Officer not below the rank of the Inspector of Police can be the Special Police Officer for dealing the offences under the Special Act and below the rank of Sub Inspector of Police can be a search officer to assist the Special Officer concerned and in the case on hand, the 2nd respondent is a Sub-Inspector of Police who assisted the investigation conducted by the 1st respondent/the Investigating Officer, and the same is evident from a bare perusal of the FIR and the charge sheet. Defending the contention raised by the learned counsel for the petitioner that the second respondent had inspected the premises in question, thereby initiating the entire

¹ Crl.O.P.(MD).No.18783 of 2022



Crl.O.P.(MD)No.23159 of 2025

investigation, the learned Government Advocate, relying upon the judgment of the three Judges Bench of the Hon'ble Apex Court in ***Bai Radha v. State of Gujarat***², categorically contended that the mandate of Section 15 of the Act is only directory and not mandatory. Hence, the argument advanced by the petitioner is not sustainable, and prays dismissal of this criminal original petition.

5.Heard the learned counsel on either sides and perused the materials available on record.

6.It is needless to state that, as per the order passed in G.O. Ms. No. 618, Social Welfare Department, dated 13.04.1987, the second respondent, being a Sub-Inspector of Police, is empowered to assist the Special Police Officer, who is none other than the first respondent herein. As rightly pointed out by the learned Government Advocate (Crl. Side), the Hon'ble Apex Court has dealt with this issue in ***Bai Radha v. State of Gujarat***³ and the relevant portions of the same are extracted hereunder:

9. Thus all proceedings including investigation had to be conducted in accordance with the procedure laid down in the Criminal Procedure Code

² (1969) 1 SCC 43

³ (1969) 1 SCC 43



except to the extent of the specific provisions contained in the Act. No such provision has been brought to our notice nor indeed has it been contended that Section 537 of the Code of Criminal Procedure would not govern the investigation, inquiry or trial of the offences with which the appellant was charged. The ratio of the decision in the case of Bhagwati Kishore Joshi [1963 SCC OnLine SC 91 : (1964) 3 SCR 71] must be followed and in the absence of any prejudice having been shown by non-compliance with the provisions of sub-sections (1) and (2) of Section 15 of the Act, the order of the High Court must be upheld.

10. In conclusion it may be observed that the investigating agencies cannot and ought not to show complete disregard of such provisions as are contained in sub-sections (1) and (2) of Section 15 of the Act. The Legislature in its wisdom provided special safeguards owing to the nature of the premises which have to be searched involving inroads on the privacy of citizens and handling of delicate situations in respect of females. But the entire proceedings and the trial do not become illegal and vitiated owing to the non-observance of or non-compliance with the directions contained in the aforesaid provisions. The court, however, has to be very careful and circumspect in weighing the



evidence where there has been such a failure on the part of the investigating agency but unless and until some prejudice is shown to have been caused to the accused person or persons the conviction and the sentence cannot be set aside. It may not be out of place to reiterate what was said in H.N. Rishbud v. State (Delhi Admn.) [(1954) 2 SCC 934 : (1955) 1 SCR 1150] that a defect or an illegality in the investigation, however serious, has no direct bearing on the competency or the procedure relating to cognizance or trial of an offence and that whenever such a situation arises, Section 537 of the Code of Criminal Procedure is attracted and unless the irregularity or the illegality in the investigation or trial can be shown to have brought about a miscarriage of justice, the result is not affected.

7.This Court is of the considered view that the proposition laid down in ***Bai Radha v. State of Gujarat***⁴ can be followed in the facts and circumstances of the present case as well. The safeguard provided under Section 15(2) of the Act has been devised by the lawmakers keeping in mind the nature of the place to be searched, namely, whether the premises are residential or commercial. In the instant case, since the premises searched was a residential building, the second respondent, who is a female police officer, was engaged in conducting the search.

⁴ (1969) 1 SCC 43



Crl.O.P.(MD)No.23159 of 2025

WEB COPY

8.Considering the same and following the principles laid down in stated supra, this Court does not find any infirmity in the investigation conducted by the respondent police. This Court has no hesitation in holding that non-observance of the provisions of Section 15(2) of the Act would not vitiate the entire criminal proceedings, as the said provision is directory and not mandatory. However, the petitioner is at liberty to raise all these points before the trial Court during the course of trial.

9.Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

18.12.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/No
vsg



Crl.O.P.(MD)No.23159 of 2025

WEB COPY **TO:-**

- 1.The Judicial Magistrate, Additional Mahila Court,
Srivilliputhur, Virudhunagar District.
- 2.The Inspector of Police,
All Women Police Station,
Srivilliputhur,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.23159 of 2025

L.VICTORIA GOWRI, J.

vsg

Order made in
Crl.O.P.(MD)No.23159 of 2025

Dated
18.12.2025