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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.4.2022.

Delivered on: 29.4.2022

CORAM

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

Criminal Original Petition No.922 of 2021
and
Crl.M.P.No.581 of 2021

1. Hema Jwaalini
Hema Chowdri
(name as mentioned in FIR)

2. K.C.Sushant
3. Ningreingam

Petitioners.

vs.

1. The Commissioner of Police,
Chennai City Police Commissionerate,
Vepery, Chennai.
2. The Inspector of Police (Crime),
K4 Police Station,
Anna Nagar, Chennai.
3. The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower, II Floor,
Egmore, Chennai 600 008.
4. The Superintendent,
Government Home for Women,
Mylapore, Chennai 600 004.



5. M.George

Respondents.

WEB COPY Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to FIR in Crime No.976 of 2020 dated 11.11.2020 registered on the file of the 2nd respondent and to quash the same insofar as the petitioners are concerned by allowing the Criminal Original Petition.

For Petitioners : Mr.B.Harikrishnan

For Respondents : Mr.Hasan Mohamed Jinnah,
State Public Prosecutor &
Mr.A.Gokulakrishnan, APP assisted by
Ms.Archana

ORDER

The petitioners, facing a case in Crime No.976 of 2020 for the offences punishable under Sections 3(2)(a), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956 seeks to quash the same.

2. The factual matrix behind the filing of the present petition is as under:-

i) On receipt of an information that under the guise of running Spa, prostitution is being carried on in the premises of Willow & Spa of Anna Nagar Branch situate near Tower Park, the second respondent had requested the de facto complainant/fifth respondent herein, M.George, who had accepted to assist the police for the surveillance and surprise raid.

ii) Accordingly, on 11.11.2020, the de facto complainant had



visited the Spa and enquired with the third petitioner with regard to availability of girls and the security issue for which, the third respondent had replied that the Spa is being run by petitioners 1 and 2 and one Fazil is the Manager, who are influential persons.

iii) On query by the de facto complainant with regard to payment for having sexual services, the third demanded a sum of Rs.6000/- for which, the de facto complainant had swiped his credit card for a sum of Rs.4500/- and when the balance amount was demanded by the third petitioner, the de facto complainant had replied that he would pay it later.

iv) Thereupon, the third petitioner took the de facto complainant to a room and by informing a Manipuri girl by name Tabitha Pamei, who was there, that a customer had come and amount had also been paid, had closed the door of the room. Subsequent to that, the said girl had exposed her fully and immediately, the de facto complainant, getting excuse from her, had come out and rushed to the second respondent police station and lodged a complaint, which ended in registration of the above case in Crime No.976 of 2020, quashment of which is sought for by the petitioners.



3. The case of the petitioners is as under:-

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i) Petitioners 1 and 2 are the owners of Willows Spa Private Limited having office at No.88, Karpagam Avenue, Raja Annamalaipuram, Chennai 600 028. They are running their Spa in various places across the Chennai City in rented premises and one such premises is at No.27/17, X Block, 5th Street, Near Tower Park, Anna Nagar, Chennai 600 040, taken care by its Manager, third petitioner, who is arrayed as A4 in the case while petitioners 1 and 2 have been arrayed as A1 and A2. A3, Faizal has got nothing to do with the petitioners organization and they do not know anything about the role of A3 in the offence.

ii) The petitioners are running their Spa at various places after obtaining necessary approvals from the authorities concerned as required under the statutory provisions and applied for Trade Licence for running the Spa required under the provisions of Chennai City Municipal Corporation Act, 1919 as early as in February 2020 and they have also paid the requisite fee to the Greater Chennai Corporation towards grant of Trade Licence and the same has been duly acknowledged.

iii) Whiles, on 11.11.2020, around 6.15 pm, the petitioner had



received a phone call from the Anna Nagar Branch of their Spa informing her that the police had visited the Branch for licence verification. Since the petitioner was out of station, it took about two hours for her to reach the Anna Nagar Branch of the Spa.

iv) In the meanwhile, at about 6.00 pm, the de facto complainant, a decoy of the second respondent police visited the Spa and enquired about massage services for a hour and paid Rs.2500/- by using his own credit card and subsequently, the second respondent, who had appeared at the Branch, forced the Receptionist therein to swipe his credit card towards another sum of Rs.2000/- and out of fear, the Receptionist had swiped the card for another sum of Rs.2000/-. Before ever, the first petitioner could reach the Branch, the second respondent took the staff of the Spa to the police station and detained them till midnight and thereafter, they were released one by one.

v) On an earlier occasion, one Kadek Dwi Ani Rasmini of Indonesia working as a Massage Therapist in the petitioners Spa at Neelangarai Branch was detained by the Inspector of Police, Neelangarai on 2.10.2018 and sent to the fourth respondent Home. An FIR in Crime No.1518 of 2018 dated 1.10.2018 was registered



against the Manager of the petitioner Branch and the said Therapist was cited as a victim and detained in the Home for 26 days and subsequently, she was released from the Detention Home by order dated 26.10.2018 in CrI.M.P.No.5881 of 2018 and the earlier FIR in Crime No.1518 of 2018 was, subsequently, quashed.

vi) Seeking compensation of Rs.10,00,000/- for denial of personal liberty, loss of personal reputation and monetary loss, a writ petition in W.P.No.29995 of 2018 was filed by the victim Kadek Dwi Ani Rasmini, wherein, this court was pleased to direct the State Government to pay a sum of Rs.2.50 lakhs to the victim therein through the Consulate of Republic of Indonesia, Chennai and such compensation was ordered to be recovered from the salary of the police officer in instalments and since then, the respondents are targeting the petitioner Spa by fabricating false cases and thereby quashment of the present criminal proceedings has been sought for.

4. The sum and substance of the arguments made by the learned counsel appearing for the petitioners are as under:-

i) In the process of registration of the FIR, there is procedural irregularity as the Immoral Traffic (Prevention) Act mandates a prescribed method of search with warrant by the competent officer and



the second respondent had exceeded his jurisdiction in deploying the de facto complainant to make out a case.

ii) The second respondent has not carried out the search by following the procedure prescribed under Section 15 of the Immoral Traffic (Prevention) Act as he cannot conduct the search *de hors* Sections 13 and 15 of the Act and it suffers from material irregularity.

iii) The respondent, who has registered a case and conducted search, is not a Special Police Officer as required under Section 13 of the Immoral Traffic (Prevention) Act and therefore, the violation of mandatory provisions in registering a case against the petitioners would vitiate and nullify the entire criminal proceedings and thereby, it requires to be quashed as held in ***Delhi Administration vs. Ram Singh (AIR 1962 SC 63)***.

iv) The second respondent is frequently carrying out searches in a manner not prescribed under Section 15 of the Act tantamounting to an unlawful interference with the fundamental right of the petitioners to carry on their business or profession which is not declared as unlawful by any legislation.

v) The act of the second respondent in carrying out the arrest is vitiated under law in as much as the same relates to gross violation of

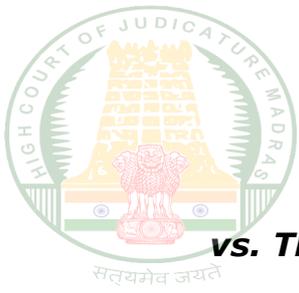


the provisions as contemplated under Sections 13 and 15 of the Act.

WEB COPY vi) It is a stage managed complaint. The respondents, having been antagonized in respect of certain actions taken by the petitioners against the Commissioner of Police, filed a false case against the petitioners. Even as per the de facto complainant, the alleged occurrence is said to have taken place at 8.30 pm on 11.11.2020 whereas the complaint is said to have been registered within 45 minutes viz., at 9.15 pm on 11.11.2020.

vii) Though engaging of decoy witness has been deprecated by this court in **Re: Ratnamala and another vs. Unknown (AIR 1962 Madras 31)**, for the purpose of registering cases, in the present case, the respondent-police had indulged in the same practice for registering the case against the present petitioners.

viii) The manner in which the FIR came to be registered is in gross violation of mandatory procedures and guidelines given by this court in **Masti Health and Beauty Private Limited v. Commissioner of Police (2014 SCC OnLine Mad 11927)**, which has been followed by this court in **Kadek Dwi Ani Rasmini vs. K. Natarajan, Inspector of Police and Others (2019 SCC OnLine Mad 23)** and the decision of this court in **Govindaraj and another**



vs. The Inspector of Police (Crl.O.P.(MD) Nos.16310 & 17442 of 2019 dated 10.2.2020).

ix) The registration of the present case against the petitioners is manifestly attended with mala fides. It came to be registered at 8.30 pm on 11.11.2020 and the allegations made in the FIR are so absurd and inherently improbable. When there is an express legal bar engrafted in any of the provisions of the Code, the violation of proceedings is an abuse of process of law. When the criminal proceedings is manifestly attended with mala fide or where they are initiated with ulterior motive for wreaking vengeance on the accused with a view to spite them due to a private and personal grudge, the registration of the FIR falls within the ambit of clauses 5, 6 and 7 of para 102 of decision of the Apex Court in **State of Haryana and others vs. Bhajan Lal and others 1999 Supp (1) SCC 335.**

x) Several cases have been filed by the police against the petitioners since the petitioners have failed to yield to the illegal demands made by the respondents and thereupon, the petitioner have also filed the following cases against the police:-

Sl. No.	Case No. and year	Prayer & status
1	W.P.No.17528/2018- Disposed	Mandamus to restrain from harassment. Became infructuous due to filing of FIR



Sl. No.	Case No. and year	Prayer & status
		subsequent to receipt of notice.
2	CrI.O.P.No.28535/2018 -Allowed	Above FIR was quashed and a compensatory payment of Rs.2.50 lakhs to the victim was imposed on the I.O. personally.
3	CrI.O.P.No.504/2021- Disposed	Not to harass. It became infructuous due to filing of FIR in the present case.
4	CrI.O.P.No.922/2021- Present case	For quashing of above FIR in which interim order of stay of investigation and recording of victim's statement under section 164 of Cr.P.C. ordered. Victim girl has filed a Sworn Affidavit.
5	W.P.No.3693/2021- Pending	Mandamus not to interfere in the business of the petitioner. R-1 submitted an Affidavit alongwith a copy of the Circular issued to all the I.O.s to strictly comply with Section 15 of ITP Act, 1956. This WP is kept pending to monitor compliance of the Circular.
6	C.P.No.1160/2021- Disposed	Contempt petition closed after the I.O. tendered apology and filed an Affidavit admitting his mistake.
7	C.P.No.1611/2021- Pending before NAVJ	R-1 has filed an Affidavit reiterating the requirement to comply with Section 15 of ITP Act but has violated the same while raiding 8 Branches of petitioner on 23.11.2021.
8	W.P.No.1854/2021- pending before I Bench	To quash conditions prescribed for issuing NOC by R1 to run Spa Parlours. Respondents have filed an Affidavit stating that they are going to change/revise the Spa Rules, 2019 based on the flaws/defects observed by the I Bench.
9	W.P.Nos.28137, 28151,	4 Writs filed against closure notices



Sl. No.	Case No. and year	Prayer & status
	28152 & 28155/2021- pending before I Bench	issued to the 4 branches of Petitioner due to rejection of NOC by R1 by citing the pendency of present FIR.

xi) The cases filed one after the other by the respondent police against the petitioners would reveal that they act with ill motivation to harass the petitioners since the petitioners did not yield to the illegal demands made by the respondents and thereby, the present criminal proceedings initiated against the petitioners are liable to be quashed.

5. Per contra, learned State Public Prosecutor, Mr.Hasan Mohamed Jinnah, assisted by Mr.A.Gokulakrishnan, learned Additional Public Prosecutor would bring to the notice of this court the variance of factual aspects and putforth his submissions as under:-

i) It is not a case where the petitioners were running only Spa and the respondents have interfered in their business demanding any illegal demand as alleged by the petitioners. The petitioners, in the guise of running Spas, have been engaging in commercial exploitation and trafficking of women and girls taking advantage of the earlier order passed by this court in ***Masti Health and Beauty Private Limited v. Commissioner of Police (2014 SCC OnLine Mad 11927)***, which has been followed by this court in ***Kadek Dwi Ani Rasmini vs. K. Natarajan, Inspector of Police and Others (2019***



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SCC OnLine Mad 23) and the decision of this court in **Govindaraj and another vs. The Inspector of Police (Crl.O.P.(MD) Nos.16310 & 17442 of 2019 dated 10.2.2020)** and they are indulging in brothel business in large level.

ii) Only on a specific information that petitioners 1 and 2 in the guise of running Spas, were engaging girls in prostitution in the premises of Willow Spa, had requested the services of a decoy to find out the truth and accordingly, when such person had visited the Spa, the third petitioner had offered to arrange for sexual services and demanded a sum of Rs.6000/-. By swiping his credit card, the decoy had paid a sum of Rs.4500/- and had agreed to pay the balance later and the decoy was taken inside a room where he had seen a Manipuri girl, the victim in this case by name Tabitha Pamei, who was in a nude position and thereupon, the decoy had rushed to the police and based on the complaint, a case was registered by the Inspector of Police and thereafter, a search was conducted in accordance with the procedure and the victim girl was secured from the brothel house and produced before the court.

iii) It is a case where the victim girl has been repeatedly exploited by the petitioners. The very same victim in this case viz.,



Tabitha Femi had been traded between Spas by the petitioners and earlier, she was rescued from a brothel home run in the name of T2 Spa and Salon. Earlier, the Inspector of Police, Anti Vice Squad, Chennai had registered a case in Crime No.91 of 2018. Pursuant to the search conducted at T2 Spa and Salon at Annanagar, West Extension, Chennai 600 101, the investigation officer, had rescued the very same victim Tabitha Femi on 21.7.2018 and produced her before the IV Metropolitan Magistrate, Saidapet, Chennai.

iv) Thereafter, one Kujinang son of Thiubamang, claiming to be the father of the victim girl, had sought for her custody under Section 17(2) of Immoral Traffic (Prevention) Act in Cr.M.P.No.1472 of 2018. The victim was produced before the court on 19.9.2018 through Video Conferencing System and the petitioner therein, who claimed to be her father, had appeared in person and when the victim had been enquired, she had stated that she had come to Chennai alongwith her lover during January 2016 and that she had initially joined in a Call Centre for monthly salary and thereafter, she had moved to Aroma Foot Reflex Massage Centre and later, on the offer for higher salary, she had joined T2 Spa during May 2018 and one of the agents by name Meena had forced her to do immoral jobs to the customers.



v) The victim had further stated that on the ill advice of the said

Meena she had involved in immoral activities, however, since she had wanted to reintegrate with her family, the learned IV Metropolitan Magistrate, Saidapet, Chennai, by order dated 25.9.2018, had handed over the custody of the victim girl to the petitioner therein viz., Kujinangh and she was also placed under probation. Whiles, the petitioners have again utilized the victim for their immoral activities in the guise of running Spa.

vi) It is the habit of the petitioners to approach this court and obtain orders not to harass and similarly, the petitioners have earlier approached this court by filing CrI.O.P.No.504 of 2021 and this court, finding that a regular case was registered against the petitioners in Crime No.976 of 2020, had dismissed the petition. Subsequent to the rescue of Tabitha Femi, the victim in this case, one Builbireiyang Pamei son of Ramrichung Pamei, claiming to be the brother of the victim, had filed an Application in CrI.M.P.No.127 of 2020 under Section 17(2) of Immoral Traffic (Prevention) Act contending that he was desirous to provide shelter to his sister and assured that his sister would not fall into the trap of immoral trafficking and would take care of his sister's future.



vii) The victim was produced before the court on 19.1.2021 through video conferencing for enquiry. The victim's brother had appeared in person. During enquiry, the victim had reassured that she would not fall into the trap like the present one where she has been victimized. Thereupon, custody of the victim was handed over to her brother by order dated 20.1.2021.

viii) Whiles, the petitioners have moved CrI.M.P.No.582 of 2021 in the present petition contending that there was no one to take care of her or relieve her from the vigilance home and obtained a direction .

ix) This court had also passed an order on 25.1.2021 directing the fourth respondent to produce the victim girl before the V Metropolitan Magistrate on 29.1.2021 at 10.30 am and had further directed the V Metropolitan Magistrate to record the 164 statement of the victim on the same day. Even prior to that, the victim had been handed over custody to her brother. Subsequently, the petitioners have produced the victim before the court on 29.1.2021, and the court had taken note of the fact that the victim was also released from the Home and recorded the statement in CrI.M.P.No.2608 of 2021 on 29.1.2021 and closed the same.



x) In the statements given in Crl.M.P.No.1472 of 2018, and in the statement given in Crl.M.P.No.127 of 2020, the victim had admitted that she had been subjected to immoral acts. Despite the fact that she was directed to be kept in probation in earlier cases, she had involved in the subsequent case in Crime No.976 of 2020 on the file of K4 Annanagar Police Station.

xi) The present case is only in the initial stage of investigation and the petitioners, by misusing the orders passed by this court, in respect of genuine persons running Spa have repeatedly involved in immoral activities. The non-compliance of the requirements of Section 15 of the Act would not necessarily vitiate the entire proceedings and thereby he would seek to dismiss the Application.

xii) As per G.O.Ms.618, Social Welfare Department, dated 13.4.1987, the Government of Tamil Nadu had appointed every Police Officer not below the rank of Inspector of Police to be the Special Police Officers for dealing with the offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956 and as such, the Inspector of Police, who had registered the case is the Special Police Officer and there is no violation of Section 13 of the Act.

xiii) The case has been registered by the Inspector of Police, who



is a Special Police Officer under the Act and since the case is only at the initial stage of investigation, non-compliance of Section 15 need not be considered as it is a matter for trial and that would not necessarily vitiate the entire proceedings.

xiv) So far as the ground taken by the petitioners in respect of violation of Section 15 of the Act is concerned, 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, however, in the case on hand, the place where the search was conducted is not a residential one and it is only a commercial place.

xv) When the cases in ***Masti Health and Beauty Private Limited v. Commissioner of Police (2014 SCC OnLine Mad 11927)***, ***Kadek Dwi Ani Rasmini vs. K. Natarajan, Inspector of Police and Others (2019 SCC OnLine Mad 23)*** and ***Govindaraj and another vs. The Inspector of Police (Crl.O.P.(MD) Nos.16310 & 17442 of 2019 dated 10.2.2020)*** were argued, the G.O.Ms.No.618 of Social Welfare Department dated 13.4.1987 and the decision of the Hon'ble Apex Court in ***Bai Radha vs. State of Gujarat (1969 (1) SCC 43) case*** were not brought to the notice of this court.



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xvi) It is a settled position that the provisions under Section 15 is only directory and not mandatory in nature. Further, in every case, on the touchstone of Section 15(2) of the Immoral Traffic (Prevention) Act, 1956, it has to be determined by the courts whether it was efficacious for the officers to call two persons from the locality or if due to urgency or emergency, the said provision could not be complied with, it has to depend on the facts and circumstances and mere violation of Section 15(2) of Immoral Traffic (Prevention) Act will not vitiate the proceedings, as it will be in the realm of appreciation of evidence in each and every case.

xvii) Above all, the investigation is in the initial stage and the respondents are of the firm view that on completion of enquiry, they could bring out many truth about the illegality and immoral activities being carried out by the petitioners causing nuisance to the society under the guise of running Spas and Beauty Parlours and thereby, it may not be conducive to quash the criminal proceedings initiated against the petitioners at this prenatal stage.

6. In support of his contention with regard to procedural irregularities, the learned Public Prosecutor would rely on various decisions of the Apex Court, this High Court and various other High



Courts, which are listed as under:-

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i) Bai Radha vs. State of Gujarat (1969 (1) SCC 43)

ii) R.A.H.Siguran vs. Shankare Gowda alias Shankara and another (2017) 16 SCC 126

iii) Vinod Kumar Garg vs. State (2020) 2 SCC 88

iv) Shyam Lal Sharma vs. State of Madhya Pradesh ((1972) 1 SCC 764

v) State of Punjab vs. Balbir Singh (1994) 3 SCC 299

vi) The State of Tamil Nadu and another vs. M/s.Kandasamy Pillai and others (1976 SCC OnLine Mad 265)

vii) Suseela vs. State (1981 SCC OnLine Mad 199)

viii) Jagannathan and others vs. The State (1983 SCC OnLine Mad 143)

ix) Bijay Krishna Sahay vs. The State of Bihar and others (1998 SCC OnLine Pat 378

x) Shyam Kumari and others vs. State of U.P. and another (1984 SCC OnLine All 268)

xi) Mumtaj @ Behri vs. The State (Govt. of NCT of Delhi) (2002 (65) DRJ 262)

xii) Ravi Shankar Prasad Yadav vs. State of Bihar (2009 SCC



OnLine Pat 502)

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xiii) Abdulla Gafur Sumra vs. State of Gujarat (1992 SCC

OnLine Guj 168)

7. Referring the above decisions, the learned Public Prosecutor would submit that the decision in **Bai Radha vs. State of Gujarat (1969 (1) SCC 43)** squarely covers the issue in the case on hand and the principle laid down in the said decision has been followed in all the other decisions.

8. Bringing to the notice of the court the decision in **Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. (1997) 6 SCC 450,** the learned Public Prosecutor would submit that the Apex Court had deprecated the practice of subordinate courts including the High Courts passing judicial orders which are clearly contrary to the settled legal position and by pointing out the emphasis made in the decision in **Union of India vs. Major General Shri Kant Sharma (2015) 6 SCC 773,** he would submit that Article 141 of the Constitution of India makes the law declared by the Supreme Court to be binding on all courts.

9. Heard the learned counsel appearing for the parties and perused the entire materials available on record.



10. A perusal of the entire materials in the light of the submission on both sides reveals that the petitioners are facing the criminal proceedings initiated by the respondent police on the allegation that under the guise of running Spas and Beauty Parlours, they run brothel house by exploiting women and girls and they become a nuisance and annoyance to the society, however, they claim that such criminal proceedings are false cases implicated against them with mala fide intention by the respondent police since their illegal demands were satisfied by the petitioners.

11. However, peculiarly, the petitioners have not at all taken a stand in their petition as if they have not indulged in any immoral act as alleged by the respondent police. The petitioners took much efforts to harp on the issue mainly on procedural irregularity on the part of the respondent police and they have not taken any step to deny the allegation.

12. On factual aspects, the petitioners would project as if there is a cold war between them and the respondents, by placing materials to the effect that many cases had been registered by the respondent police against the petitioners and thereupon, the petitioners were constrained to confront the same and all such proceedings initiated by



the respondent police are only false cases to harass the petitioners since they had not yielded to the illegal demands made by the respondent police.

13. In crux, the stand taken by the petitioners are three folds and they are as under:-

i) The Inspector of Police, who had conducted the search and made arrest is not a Special Police Officer as specified in the Act.

ii) There is procedural irregularity on the part of the respondent police in complying with Section 15 of the Act in conducting the raid.

iii) Engaging a decoy witness is administered by the respondent police despite the deprecation made by various courts.

14. The petitioners mainly intend to take shelter under the decisions of this court in ***Masti Health and Beauty Private Limited v. Commissioner of Police (2014 SCC OnLine Mad 11927)***, which has been followed by this court in ***Kadek Dwi Ani Rasmini vs. K. Natarajan, Inspector of Police and Others (2019 SCC OnLine Mad 23)*** and the decision of this court in ***Govindaraj and another vs. The Inspector of Police (Crl.O.P.(MD) Nos.16310 & 17442 of 2019 dated 10.2.2020)*** and to contend that the procedural



irregularities on the part of the police had been heavily come down in the said decisions and thereby seeks indulgence of this court in the present proceedings also.

15. Every coin has got two sides. Though the petitioners try to pose as if criminal proceedings are being initiated one after another by the respondent police with mala fide intention, the home truths enlightened by the learned Public Prosecutor would clearly reveal that the victim in this case viz., Tabitha Femi is being traded between Spas.

16. When she was rescued on two earlier occasions by the respondent police, she had given 164 Statements to the Magistrates concerned with categorical admission of her state of being subjected to immoral acts. It appears that on one such occasion, one Kujinang son of Thiubamang, claiming to be the father of the victim girl, had sought for her custody under Section 17(2) of Immoral Traffic (Prevention) Act and on such petition and enquiry thereon, custody of the victim was given to the petitioner therein, who claimed to be the father of the victim girl and she was directed to be kept under probation, however, she was again subjected to immoral acts and when rescued by the respondent police, one Builbireiyang Pamei son of Ramrichung Pamei, claiming to be the brother of the victim, had filed an Application



contending that he was desirous to provide shelter to his sister and assured that his sister would not fall into the trap of immoral trafficking and would take care of his sister's future.

17. Such being the factual position, the present petitioners have moved Crl.M.P.No.582 of 2021 in the present petition contending that there was no one to take care of her or relieve her from the vigilance home and obtained a direction from this court by order dated 25.1.2021 wherein this court had directed the fourth respondent to produce the victim girl before the V Metropolitan Magistrate on 29.1.2021 at 10.30 am and had further directed the V Metropolitan Magistrate to record the 164 statement of the victim on the same day. However, even prior to that, the victim had been handed over custody to her brother and subsequently, the petitioners have produced the victim before the court on 29.1.2021, and the court had taken note of the fact that the victim was also released from the Home and recorded the statement in Crl.M.P.No.2608 of 2021 on 29.1.2021 and closed the same.

18. The factual contradictions being so, the strenuous submission of the petitioners is on the basis of procedural irregularities on the part of the respondent police and such course of action has



been condemned by this court in ***Masti Health and Beauty Private Limited v. Commissioner of Police (2014 SCC OnLine Mad 11927)***, which has been followed by this court in ***Kadek Dwi Ani Rasmini vs. K. Natarajan, Inspector of Police and Others (2019 SCC OnLine Mad 23)*** and the decision of this court in ***Govindaraj and another vs. The Inspector of Police (Crl.O.P.(MD) Nos.16310 & 17442 of 2019 dated 10.2.2020)***.

19. The first contention of the petitioners is that Section 13 of the Immoral Traffic (Prevention) Act has not been complied with by the respondent police and the Inspector of Police, who had conducted the raid and made arrest of the petitioners is not a Special Police Officer as specified in the Act and thereby the entire criminal proceedings against them is vitiated. Reliance is placed by the petitioners on the decision in ***Delhi Administration vs. Ram Singh (AIR 1962 SC 63)***.

20. The purpose of enactment of Immoral Traffic (Prevention) Act was to inhibit or abolish the commercialized trafficking of women and girls for the purpose of prostitution as an organised means of living. Section 13 of the Act reads as under:-

13. Special police officer and advisory body.—



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(1) *There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.*

(2) *The special police officer shall not be below the rank of an Inspector of Police.*

(2A) *The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally: Provided that no such power shall be conferred on—*

(a) *a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;*

(b) *a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.]*

(3) *For the efficient discharge of his functions in relation to offences under this Act—*



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(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and

(b) the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall



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*exercise such powers and discharge such functions
in relation to the whole of India.*

21. Of course, the only point for consideration before the Apex Court in the decision in ***Delhi Administration vs. Ram Singh (AIR 1962 SC 63)*** was whether a police officer, who is neither a special police officer under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act 104 of 1956) nor a police officer subordinate to a special police officer, can validly investigate the offences under the Act and the Appeal before the Apex Court was dismissed with the opinion of the majority.

22. But, in the case on hand, so far as the contention of non compliance of Section 13 of the Act is concerned, it is relevant to note that a G.O.Ms.618, Social Welfare Department, dated 13.4.1987 has been produced by the learned Public Prosecutor, the relevant portion of which reads as under:-

"In exercise of the powers conferred by section 13 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956) and in supersession of the orders issued with



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G.O.Ms.No.2527, Home, dated the 6th September 1958 and G.O.Ms.No.2014, Home, dated the 29th June 1964, the Governor of Tamil Nadu hereby appoints every Police Officer not below the rank of an Inspector of Police to be the special police officer for dealing with offences under the said Act in respect of the areas within his jurisdiction and also appoints every Police Officer (including Women Police Officers wherever necessary) not below the rank of a Sub-Inspector of Police as subordinate police officer to assist the special police officer concerned."

23. A careful reading of the above G.O. makes it very clear that in the instant case, the Inspector of Police, who had registered the case is certainly a Special Police Officer under the Act and there is no violation of Section 13 of the Act.

24. Insofar as the second and third contention of the petitioners that there is procedural irregularity on the part of the respondent police in complying with Section 15 (1) and (2) of the Act in conducting the raid and the deprecation of engaging a decoy witness are concerned, the petitioners heavily rely upon the decisions of this



court cited supra.

WEB COPY 25. Sofar as the decision in ***Masti Health and Beauty Private Limited v. Commissioner of Police (2014 SCC OnLine Mad 11927)***, is concerned, in those cases, it appears that having frustrated with the frequent searches and raids made by the respondent police therein, the petitioners therein, owners of the Beauty Parlours/Salons/Spas, had approached this court seeking directions forbearing the respondent police from interfering with their business, placing reliance on an interim order dated 31.7.2009 passed by this court in O.A.No.249 of 2009 restraining the respondents therein from disturbing or interfering with the peaceful conduct of their business, holding that the Police have no legal right to prevent a health spa run by a citizen, even if some of the services rendered therein are by persons belonging to the opposite sex, of course, with a cautious observation as under:-

"At the same time, there is no prohibition for the respondent-Police to inspect and take appropriate action in accordance with law, in cases of any criminal activities prohibited by law"



26. In the said batch cases, the Hon'ble Judge had analysed the issue from 3 angles, namely (i) the prescription contained in Chennai City Municipal Corporation Act, 1919 (ii) the provisions of the Immoral Traffic (Prevention) Act, and (iii) the need to regulate massage parlours/spas etc., by law, to avoid friction between both sides.

27. A perusal of the order passed in the batch cases indicates that only on the basis of a presumption drawn that the provisions of Immoral Traffic (Prevention) Act might not have been followed in strict compliance, a general observation was made by the Hon'ble Judge that the respondents cannot carry out searches *de hors* Section 15 of the Act. Such observation reads as under:-

"36. Therefore, the only presumption that I can draw is that as against the writ petitioners herein, the Police did not carry out a search by following all the steps prescribed in Section 15. When the mandate of the law is so clear in Section 15, the respondents cannot carry out a search *de hors* Section 15."

28. However, it appears that strict compliance of the provisions of the Immoral Traffic (Prevention) Act or non-compliance thereof was



not at all confronted in those matters. In the subsequent cases viz.,

Kadek Dwi Ani Rasmini vs. K. Natarajan, Inspector of Police and Others (2019 SCC OnLine Mad 23) and in **Govindaraj and another vs. The Inspector of Police (Crl.O.P.(MD) Nos.16310 & 17442 of 2019 dated 10.2.2020)**, the decisions were rendered by relying upon the decision in **Masti Health and Beauty Private Limited v. Commissioner of Police (2014 SCC OnLine Mad 11927)**, whereas the relevant G.O. appointing the Inspectors of Police as Special Police Officer under the Act and the decision in **Bai Radha** case, which still holds water, were not brought to the notice of the court.

29. The scope of Section 15(1) and (2) of the Act has been dealt with by a Three Judges Bench of the Apex Court in **Bai Radha case (cited supra)** wherein it has been held that 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. In the said decision, the question of strict compliance of the legal provisions and the impact on non-observance of the same was considered and it has been held as under:-



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*"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-ss. (1) and (2) of s. 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 direction 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."

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30. The nature of place under search viz., residential or commercial has got some impact in compliance of Section 15(2) of the Act and when it happens to a residential place, the safeguard provided by Section 15(2) of the Act comes into play whereas, in the case on hand, the place where the search was conducted is not a residential one and it is only a commercial place.

31. On going through the decisions relied on by the learned Public Prosecutor, this court finds that as rightly pointed out by the learned Public Prosecutor, the principle laid down in the decision in ***Bai Radha*** case has been followed in the later decisions of the Apex Court and the decisions of various other High Courts and it has become a settled law that non-observance of the provisions of Section 15 of the Immoral Traffic (Prevention) Act would not vitiate the entire criminal proceedings and such provisions are only directory and not mandatory. Further, this court is of the view that since the same principle has been adopted in other decisions relied on by the learned Public Prosecutor, to be precise, it may not be necessary to reproduce any portion of such decisions.



32. In every case, on the touchstone of Section 15(2) of the Immoral Traffic (Prevention) Act, 1956, it has to be determined by the courts whether it was efficacious for the officers to call two persons from the locality or if due to urgency or emergency, the said provision could not be complied with, it has to depend on the facts and circumstances and mere violation of Section 15(2) of Immoral Traffic (Prevention) Act will not vitiate the proceedings, as it will be in the realm of appreciation of evidence in each and every case.

33. Above all, it has been pointed out by the learned Public Prosecutor that the investigation is in the initial stage and the respondents are of the firm view that only on completion of enquiry, they could prove the illegality and immoral activities being carried out by the petitioners under the guise of running Spas and Beauty Parlours.

34. The learned counsel for the petitioners would contend that the respondent police have been filing false cases against the petitioners with mala fide intention since their illegal demands were not satisfied by the petitioners and when the criminal proceedings is manifestly attended with mala fide or where they are initiated with ulterior motive for wreaking vengeance on the accused with a view to



spite them due to a private and personal grudge, the registration of the FIR falls within the ambit of clauses 5, 6 and 7 of para 102 of decision of the Apex Court in ***State of Haryana and others vs. Bhajan Lal and others*** 1999 Supp (1) SCC 335, which reads as under:-

"(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for



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wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

35. Having perused the entire materials available on record and in the light of the factual suppressions made by the petitioners, as pointed out by the learned Public Prosecutor, this court is of the view that no mala fide intention can be attributed to the respondent police in registering the case when especially, there is prima facie material to show that the victim, Tabitha Pamei has been traded between Spas and when she had been enquired by the Magistrate in the petition filed under Section 17 of the Immoral Traffic (Prevention) Act for custody, she had disclosed that she had indulged in immoral activities on account of the ill advice of her friend.

36. To determine whether there are any procedural irregularities is a matter for trial and therefore, when the criminal proceedings is at the initial stage it cannot be quashed. In this regard, the Apex Court has held in ***Rajeev Kourav v. Baisahab, (2020) 3 SCC 317*** as under:-

8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding



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is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."

37. In ***Kaptan Singh v. State of U.P., (2021) 9 SCC 35***, also it has been held by the Apex Court as under:-

12. *Therefore, the High Court has grossly erred in*



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quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

38. In view of the above, this court finds that the Criminal Original Petition lacks merits and is liable to be dismissed. Accordingly, it is dismissed. The connected Miscellaneous Petition is also dismissed.

29.4.2022.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. The Commissioner of Police,
Chennai City Police Commissionerate,
Vepery, Chennai.
2. The Inspector of Police (Crime),
K4 Police Station,
Anna Nagar, Chennai.
3. The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower, II Floor,
Egmore, Chennai 600 008.



WEB COPY 4. The Superintendent,
Government Home for Women,
Mylapore, Chennai 600 004.

5. The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. ORDER IN
Crl.O.P. No.922 of 2021
and
Crl.M.P.No.581 of 2021

Delivered on
29.4.2022.