

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 27TH DAY OF NOVEMBER 2020 / 6TH AGRAHAYANA, 1942

Cr1.MC.No.2539 OF 2014

AGAINST THE ORDER/JUDGMENT IN CC 115/2014 OF JUDICIAL MAGISTRATE
OF FIRST CLASS -I, PERINTHALMANNA

CRIME NO.1847/2013 OF Perinthalmanna Police Station , Malappuram

PETITIONER/ACCUSED NO.1:

ALI AHAMMED
S/O. MUHAMMED VEERAN, POTHUVACHOLA HOUSE,
P.O.PATTIKKAD, CHUNGAM, MALAPPURAM DISTRICT.

BY ADV. SRI.U.K.DEVIDAS

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP.BY THE CIRCLE INSPECTOR OF POLICE, PERINTHALMANNA
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI. K.B UDAYAKUMAR(P.P)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
23-11-2020, THE COURT ON 27-11-2020 PASSED THE FOLLOWING:

M.R.ANITHA, J.

Crl.M.C.No.2539 of 2014

Dated :26th November, 2020

ORDER

Petition has been filed under Section 482 Cr.P.C. to quash all further proceedings against the petitioner/first accused in C.C.No.115/2014 in Crime No.1847/2013 of Perinthalmanna police station pending on the files of the Judicial First Class Magistrate Court-I, Perinthalmanna.

2. Petitioner's case can be summarized as follows:

Petitioner is the first accused in C.C.No.115/2014 on the files of the Judicial First Class Magistrate Court-I, Perinthalmanna. Prosecution case is that on 11.12.2003 at about 01.00 p.m, the Circle Inspector of Police, Perinthalmanna conducted a search in the lodge run by the petitioner and found that the accused No.2 to 7 were inside the lodge rooms engaged in prostitution for money. Accused No.2 to 7 were arrested and the case was registered. Thereafter, Circle Inspector, Pandikkad conducted the investigation, questioned the witnesses and filed charge under Secs 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter called as 'the Act').

3. According to the petitioner, under the provisions of the Act, arrest and investigation has to be conducted by a Special Police Officer as provided under Section 2(i) and 13 of the Act. It is also his contention that there is no provision under Section 14(ii) of the Act to empower the special police officer to authorise investigation of the case to be conducted by any other officer.

4. In this case, the investigation conducted by Circle Inspector, Pandikkad is without any authority since the place of occurrence is within the jurisdiction of Perinthalmanna police station. It is also contended that none of the offences under the Act is attracted against the petitioner and the ingredients of Sections 3, 4, 5 and 7 are also not attracted. Hence, this is a clear abuse of process of court, the learned counsel contends.

5. Notice was issued to the respondent. Smt. V. Sreeja, learned Public Prosecutor appeared for the respondent-State. Heard both sides.

6. According to the learned counsel for the petitioner, the case was instituted against the petitioner and the other accused based upon a search conducted in the lodge run by the petitioner by the Circle Inspector, Perinthalmanna. But the investigation was conducted and witnesses were questioned by the

Circle Inspector, Pandikkad who is not a special police officer as defined under the Act. Hence the entire proceedings against the petitioner are vitiated and are not sustainable in law.

7. Sections 13 and 14 (ii) of the Act are relevant in this context, to be extracted :

"13. Special police officer and advisory body.- (1) There shall be for such 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.

(2-A) x x x x x

(3) x x x x x

14. Offences to be cognizable.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code:

Provided that, notwithstanding anything contained in that Code.-

(i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;

(ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the

person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

(iii) x x x x"

8. Learned counsel also took my attention to Joseph v. State of Kerala [2011 (2) KHC 958]. In that decision, while dealing with Sections 3, 4, 5, 14 (ii) of the Act, it has been held that authorisation given by the Special Police Officer to his subordinate officer must mention the name of any of the persons to be arrested. It is also held that Special Police Officer cannot authorise investigation of the case to be conducted by any other officer. In paragraph No.4 of the said judgment, the ambit and scope of Section 13 has been dealt with, which is relevant in this context to be extracted and it reads as follows:

"4. There is also yet another aspect that is required to be looked into. Under S.13 of the Act, a Special Police Officer shall be appointed 'for dealing with the offences under this Act in that area'. 'Dealing with the case' means doing everything connected with the progress of the case. The Supreme Court in the decision referred supra considered that question and held that the expression would include detection, prevention and investigation of offences and other duties which have been specifically imposed on the Special Police Officer under the Act. It is seen from the records that investigation of the case was conducted by the Circle Inspector though, as

authorised by the Special Police Officer and the role of the Special Police Officer was only to verify the investigation and submit final report. S.14(ii) of the Act does not empower the Special Police Officer to authorise investigation of the case to be conducted by any other officer. If that be so the investigation conducted by the officer other than the Special Police Officer is against the provisions of law."

9. So in this case also the Circle Inspector, Perinthalmanna who is the Special Police Officer authorised by the Act as per G.O.(Ms) No.56/2002/Home dated Thiruvananthapuram, 24th April, 2002 (S.R.O.No.344/2002) to deal with the case which includes the investigation and filing of the charge also. In this case also copy of the Final Report Annexure -B enclosed with the file would go to show that the investigation of the case and filing of final report has been done by Police Inspector, Pandikkad who is not the Special Police Officer with respect to a crime arose in Perinthalmanna Police Station limits. So as has been held above, Section 14(ii) does not empower the Special Police Officer i.e. Inspector of Police, Perinthalmanna to authorise the investigation of the case to be conducted by the Police Inspector, Pandikkad. So the investigation conducted by the Inspector of Police, Pandikkad who is not the Special Police Officer is not in compliance with the provisions of law. So as rightly contended by the learned counsel, the criminal prosecution initiated against the petitioner based on

the final report filed by the Circle Inspector, Pandikkad is not sustainable in law. In the same context, the learned counsel also placed reliance on Abdul Rasheed & Anr. v. State of Kerala [2012 KHC 3072]. In that decision, while dealing with Sections 3(1), 4(1), 5(1)(d), 13(1) and 14, it has been held that there is no provision under the Act empowering the Special Police Officer or an officer superior to the Special Police Officer to authorise any of the subordinate officer for conducting search without warrant. It is also held that a police officer who is not appointed u/s.13(1) cannot conduct raid on the ground that he has been authorised by his superior officer to conduct such raid. Portion of paragraph No.4 of the said judgment is relevant in this context to be extracted:

“4.The learned counsel appearing for the petitioners submitted that in exercise of the power under Section 13 of the Act, Government of Kerala have issued a notification under GO(Ms.) 56/2002/Home, dated 24-4-2002 in Kerala Gazette Extraordinary No.625 dated 10/05/2002. SRO No.344/2002, appointing special Police Officers under Section 13(1) of the Act. The relevant portions of the said notification have been extracted in Radhakrishnan's case (supra). The said G.O., dated 24/04/2002 would reveal that, in exercise of power conferred by Section 13(1) of the Act, Government of Kerala have appointed Circle Inspector of Police attached to the police stations specifically named thereunder, in the State, 'as Special Police Officers' for dealing with the offences under the Act, within their respective

area of jurisdiction.”

10. As per G.O.(Ms) No.56/2002/Home dated Thiruvananthapuram, 24th April, 2002 (S.R.O.No.344/2002), the Government of Kerala appointed Circle Inspector of Police attached to the police stations in the State as Special Police Officers for dealing with offences under the Act within their respective area of jurisdiction. As far as Malappuram district is concerned, the Perinthalmanna and Pandikkad have been given under the separate jurisdictional limits and that would in turn indicate that Circle Inspector of Police, Perinthalmanna would be Special Police Officer within the jurisdiction of Perinthalmanna circle and the Circle Inspector of Police, Pandikkad would be the Special Police Officer within the Pandikkad circle. In other words, Circle Inspector of Police, Pandikkad will not be the Special Police Officer with respect to a crime committed within the jurisdictional limits of Perinthalmanna circle.

11. So, in view of the settled position of law, the final report filed by the Inspector of Police, Pandikkad who is not the Special Police Officer empowered under Section 13 of the Act is not in compliance with the provisions of the Act and hence is not sustainable in law.

In the result, Crl.M.C is allowed. The proceedings against

the petitioner in C.C.No.115/2014 in Crime No.1847/2013 of Perinthalmanna police station pending on the files of the Judicial First Class Magistrate Court-I, Perinthalmanna is hereby quashed.

Sd/-

M . R . ANITHA

JUDGE

Xshg

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE FIR AND STATEMENT IN
PERINTHALMANNA POLICE STATION CRIME NO.1847/2013 DATED
11.12.2013

ANNEXURE B: TRUE COPY OF THE FINAL REPORT IN
PERINTHALMANNA POLICE STATION CRIME NO.1847/2013 DATED
1.1.2014

ANNEXURE C: TRUE COPY OF THE LIST OF WITNESSES IN
PERINTHALMANNA POLICE STATION CRIME NO.1847/2013 DATED
1.1.2014

ANNEXURE D: TRUE COPY OF THE JUDGMENT IN
CRL.M.C.NO.1514 OF 2011 DATED 16.6.2011