

**(2016) 10 KL CK 0016**

**In the High Court Of Kerala**

**Case No :** Criminal Rev. Pet. No. 3135 of 2010 ()(Against The Judgment In CRA 447 of 2007 of Addl. Sessions Court (Adhoc-II)Kasaragode Against The Judgment In CC. 322 of 2005 of C.J.M., Kasaragod)

Khadeeja Banu

APPELLANT

Vs

Sub-Inspector of Police, Kasaragod

RESPONDENT

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**Date of Decision :** 27-10-2016

**Acts Referred:**

Immoral Traffic (Prevention) Act, 1956 — Section 13(1), Section 2(1)

**Citation :** (2017) 1 ILRKerala 421 : (2016) 4 KerLJ 832

**Hon'ble Judges :** Mr. B. Sudheendra Kumar, J.

**Bench :** Single Bench

**Advocate :** Sri. T.G. Rajendran, Advocate, for the Petitioner; Sri. C.K. Prasad, Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mr. B. Sudheendra Kumar, J. - The revision petitioner is the 4th accused in C.C. No. 322 of 2005 on the files of the Court of the Chief Judicial Magistrate, Kasaragod. The revision petitioner was found guilty under Section 9 of the Immoral Traffic (Prevention) Act, 1956 ("the I.T.P Act" for short), concurrently by the courts below.

2. The prosecution allegation can be briefly stated as follows:- On 22-01-2005 at about 5.35 p.m., accused Nos. 1 to 3 were found persuading PW1, for the purpose of prostitution, in the veranda of Building No. XX/300 of Chemnad Panchayath by PW4 and party. On questioning accused Nos. 1 to 3, it was revealed that the revision petitioner had kept a girl for prostitution in Building No. X/282 (B). Then, PW4 and party proceeded to that place and found the revision petitioner seducing PW2 for the purpose of prostitution, detaining her in Building No. X/282(B), at about 7 p.m. on the same day.

3. Before the trial Court, PW1 to PW17 were examined and Exts. P1 to P12 were marked for the prosecution, besides identifying MO1 to MO4 series. No evidence

was adduced on the side of the revision petitioner.

4. The learned counsel for the revision petitioner has argued that since the investigation in this case was conducted and the final report was filed by the Deputy Superintendent of Police, who was not a "Special Police Officer" under Section 2 (i) of the I.T.P Act, the cognizance taken and the further proceedings, including the conviction and sentence had been vitiated.

5. PW4 was the Circle Inspector of Kasaragod Police Station, during the relevant period. He conducted the raid and arrested the revision petitioner and the other accused on 22-1-2005, from the spot. The investigation was taken over by PW17, who was the then Deputy Superintendent of Police, Kasaragod, on 30-1-2005. He questioned the witnesses and recorded their statement. After completing the investigation, PW17 laid the charge before the Court.

6. Sub-section (1) of Section 13 of the I.T.P. Act provides that 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 the I.T.P. Act in that area. Sub section (2) of Section 13 (2) of the I.T.P. Act provides that the special police officer shall not be below the rank of an Inspector of Police. Section 2 (i) of the I.T.P. Act defines "Special Police Officer", which means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of the I.T.P. Act. As per SRO No. 344 of 2002, the Government of Kerala in exercise of powers under Section 13 (1) of the I.T.P. Act appointed Circle Inspector of Police of Kasaragod Police Station as "Special Police Officer" for dealing with the offences under the I.T.P Act within Kasaragod area.

7. There is no dispute that PW4 is a special police officer appointed under Section 13 (1) of the Act for Kasaragod area. It is also not disputed that PW17 was not a Special Police Officer appointed under Section 13 (1) of the I.T.P. Act by notification by the State Government. Now, the question to be considered is as to whether PW17 was empowered to conduct the investigation and file the final report before the court under the provisions of the I.T.P. Act.

8. The learned Public Prosecutor has submitted that since PW17 was the superior police officer of PW4, PW17 is having all powers which were entrusted with PW4 by the above said notification and hence, the investigation conducted and the final report filed by PW17 were perfectly legal and correct.

9. In this connection, it is profitable to read section 4 of Cr.P.C., which is extracted hereunder:-

"4. Trial of offences under the Indian Penal Code and other laws:- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any

enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences".

The import of the words "other wise dealt with" in sub section (2) of Section 4 of Cr.P.C. was considered by the Hon"ble Apex Court in Delhi Administration v. Ram Singh (AIR 1962 SC 63). It was held by the Apex Court that the word "otherwise" points to the fact that the expression "dealt with" is all comprehensive, and that investigation, enquiry, and trial were some aspects of "dealing with" the offences. Under Sub-section (1) of Section 13 of the I.T.P.Act, the special police officer is appointed for "dealing with" the offences under the I.T.P. Act in that area. The words "dealing with the offences" appearing in Section 13(1) of the I.T.P.Act include investigation, inquiry, filing of final report and the trial. On a conjoint reading of Sub-section (1) of Section 13 of the I.T.P.Act and Sub-section (2) of Section 4 of Cr.P.C., in the light of the decision of the Apex Court in Delhi Administration (supra), there can be no doubt that the special police officer appointed under Section 13 (1) of the I.T.P Act are the only officers under the State Government, having the power to conduct the raid, search, arrest of the accused, investigation and the filing of the final report. Of course, the "trafficking Police Officers" appointed by the Central Government under sub-section (4) of Section 13 of the I.T.P. Act shall exercise all the powers and discharge all the functions as are exercisable by special police officers under I.T.P.Act, with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India. Sub section (3) of Section 13 of the I.T.P. Act provides that the Special Police Officer is to be assisted, for the efficient discharge of his "functions in relation to offences" under the I.T.P. Act, by a number of subordinate police officers and will be advised by a non-official advisory body. The Apex Court in Delhi Administration (supra) held that the expression "functions in relation to offence" in Section 13(3) of the I.T.P. Act includes his functions connected with the investigation of the offences. The Apex Court further held in Delhi Administration (supra) that in respect of the offences under the I.T.P.Act, the special police officer is competent to investigate and that he and his Assistant Police Officers are the only persons competent to investigate offences under the I.T.P. Act and that police officers not specifically appointed as special police officers cannot investigate the offences under the Act eventhough the offences are cognisable offences.

10. A learned Single Judge of this Court in Radhakrishnan K. v. State of Kerala (2008 (2) KLT 521) observed thus:-

"Once an officer of a specified rank, namely the Circle Inspector of Police has been appointed by the State Government under Sub-section (1) of Section 13 of the ITP Act, it is futile for the Public Prosecutor to contend that any officer higher in rank than the officer specified under Section 13 (2) of the ITP Act can conduct investigation".

The above discussion would make it clear that once an officer of a special rank has been appointed by the State Government under Section 13 (1) of the ITP

Act, no officer higher in rank than the officer appointed under Section 13 (1) of the I.T.P. Act has the power to conduct investigation and file the final report before the Court.

11. In this case, PW4 was the Circle Inspector of Police, who was the Special Police Officer appointed for Kasaragod District by the State Government. Therefore, PW4 and his Assistant Police Officers are the only persons competent to investigate the offences under the I.T.P. Act and the police officers not specifically appointed as Special Police Officers cannot investigate the offences under the I.T.P. Act, even though their rank is superior to that of the Special Police Officers. Therefore, even though PW17 is an officer superior in rank of PW4, he had no jurisdiction to conduct investigation in respect of the offences under the I.T.P. Act. He had also no jurisdiction to file the final report before the Court. Since PW17 had no jurisdiction to conduct the investigation and file the final report before the Court, the investigation conducted and the final report filed by him and the cognizance taken and the further proceedings including the trial, on the basis of the said final report were without jurisdiction. Consequently, the conviction and sentence passed by the courts below cannot be sustained.

In the result, this Revision Petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 9 of the I.T.P. Act and the revision petitioner stands discharged. The bail bond of the revision petitioner stands cancelled and she is set at liberty.