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CrI.O.P.No.31460 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 20.01.2022	Orders pronounced on 14.02.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.31460 of 2022

Mr.Jay Shah

... Petitioner

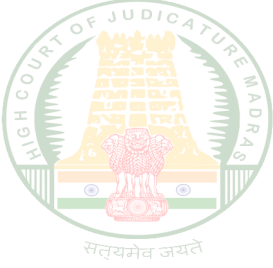
Vs.

1. The Commissioner of Police – Chennai City
EVK Sampath Road, Vepery, Periyamet
Chennai – 600 007.
2. The Deputy Commissioner of Police (Triplicane Range)
Chennai.
3. The Assistant Commissioner of Police (Nungambakkam Range)
Chennai.
4. The Inspector of Police
F-4, Thousand Lights Police Station
Chennai.

... Respondents

This Criminal Original Petition is filed under Section 482 Cr.P.C. praying to direct the 3rd and 4th respondent police not to harass the petitioner nor his staffs in relation to the running of his restaurant "Kafe Latte" along with Hookah service, except in accordance with law.

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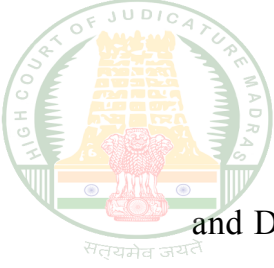
For Petitioner : M/s.C.Vidhusan
For Respondents : Mr.S.Santhosh
Government Advocate (CrI. Side)

ORDER

This petition is filed praying to issue a direction to the 3rd and 4th respondents not to harass the petitioner nor his staffs in relation to the running of his restaurant "Kafe Latte" along with Hookah service, except in accordance with law.

2. Learned counsel for the petitioner submitted that petitioner is carrying on a restaurant business in the name and style of "KAFE LATTE" (previously known as "LATTE"). Necessary statutory licenses and permits for the running of restaurant business vide License Code.09- 111-004236/2022-23 dated 04.03.2022 was given by the Greater Chennai Corporation, Chennai. Hookah is served in a designated smoking area to customers above the age of 21 years in accordance with all the guidelines laid down under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply

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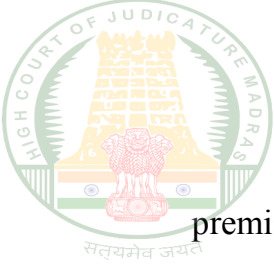
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and Distribution) Act, 2003. Hookah is served in a separate area which is a designated smoking zone. The identity card of every guest and customer is checked and only those persons above the age of 21 are allowed to enter the premises. The restaurant is also not situated within 100 yards of any educational institution. Warning boards and signs regarding the health hazard of smoking is placed in conspicuous places of the restaurant.

3. The petitioner, earlier, has filed a Writ Petition in W.P.No. 15285 of 2018 seeking injunction restraining the respondents from interfering with the peaceful conduct of the petitioner's restaurant and an order of injunction was granted. Even after the order, respondents entered the premises and arrested the employees and therefore, Contempt Petition No.1575 of 2018 was filed. Statutory notice was issued to the authorities. However Contempt Petition No.1575 of 2018 was dismissed on 08.07.2019 for no appearance of the petitioner. Again, a Contempt Petition No.1205 of 2020 was filed. It was disposed with a direction that in name of surprise inspection, respondent police cannot violate the law. On 08.11.2022, 3rd and the 4th respondent had entered the premises and searched the entire

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premises and then, registered an FIR in Crime No.246 of 2022 stating that materials for making "hookah" were available in the premises. Hookah is not a banned substance. The Hon'ble Supreme Court and this Hon'ble Court in plethora of cases stated that Hookah is not a banned substance. In the said circumstances, this petition is filed for the aforesaid relief. In support of the above submission, learned counsel for the petitioner produced the judgment reported in *(2014) 15 SCC 689 (Narinder S.Chadha and others ..vs.. Municipal Corporation of Greater Mumbai and others)* for the proposition that smoking with hookah would be permissible under Rule 4(3) of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act, 2003. He also produced the copies of similar orders passed in *W.P.No.18608 of 2021, W.P.No.6567 of 2022, W.P.No. 20180 of 2022 and W.P.No.24880 of 2022.*

4. In response, learned Government Advocate (Crl.Side) strongly opposed this petition on the ground that already First Information Report in Crime No.246/2022 for the offences under Section 24(1) of Cigarettes and



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Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act, 2003 was registered against the petitioner in Thousand lights police station for violating the provisions and for possessing banned hookah substance. He also submitted that there is no specific zone provided as mandated under the Act. First accused was supplying banned Hutka products, which is injurious to human health. Restaurant is surrounded by schools and women's colleges. There is a possibility that children would also be spoiled. He relied on the order passed in W.P.No.10223 of 2017, wherein hookah smoking was not permitted in the restaurant. Learned Government Advocate also brought to the notice of this Court that the Government of Tamil Nadu has introduced a Bill to amend the Act prohibiting hookah bars. Thus, he prayed for dismissal of this petition.

5. Considered the rival submissions and perused the records.

6. With regard to the submission of the learned Government

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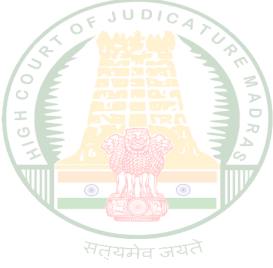
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Advocate that the Government has introduced the Bill to amend the “Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act” to prohibit the hookah bars, until the Bill is passed in the Tamil Nadu Legislative Assembly and made an Act, L.A. Bill No.57 of 2022 cannot be given effect to. It is seen from the order produced by the learned counsel for the petitioner in W.P.No.15285 of 2018, there was an injunction granted against the respondents from interfering with the petitioner's running the restaurant in the name and style of 'LATTE' and providing hookah in a separate smoking zone. The copies of the orders passed in Cont.P.Nos.1575 of 2018 and 1205 of 2020 were also filed.

7. It is observed in para 18 of the judgment reported in **(2014) 15 SCC 689 (cited supra)** that,

“18. This takes us to the definition of "smoking" contained in Section 3(n) of the Act which has been set out hereinabove. A perusal of this definition shows that it includes smoking of



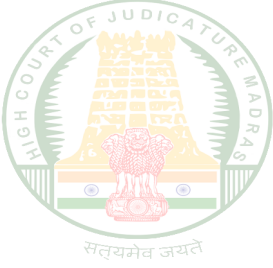
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tobacco in any form with the aid of a pipe, wrapper, or any other instrument, which would obviously include a Hookah. That being the case, "smoking" with a Hookah would be permissible under Rule 4(3) and the expression "no other service shall be allowed" obviously refers to services other than the providing of a Hookah. It is, thus, evident that the added words in clause (C) of Condition No.35 are clearly ultra vires the Act and the Rules."

8. As per this judgment of the Honorable Supreme Court, the term 'smoking' includes smoking with hookah and it is permissible under Rule 4(3) of the Act. Thus, it is made clear that there is no prohibition for providing hookah service in a restaurant, but it is subject, of course, to the conditions laid down in Section 4 and Rule 4 of the Act.



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9. Section 4 of the Act reads as follows:-

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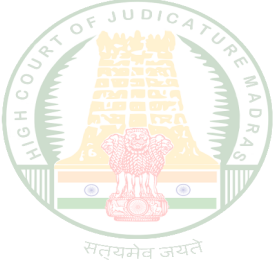
“4. Prohibition of smoking in a public place.—No person shall smoke in any public place: Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.”

10. As per this Section if a hotel has 30 rooms and restaurant has seating capacity of 30 persons or more, a separate provision for smoking area or space may be made.

11. Rule 4 of “The Prohibition of Smoking in Public Places Rules, 2008” reads as follows:-

4. Hotels, Restaurants and Airports: -

(1) the owner, proprietor, manager, supervisor or in charge of the affairs of a hotel having thirty or more rooms or restaurant having seating capacity of thirty



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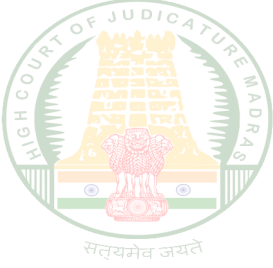
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persons or more and the manager of the airport may provide for a smoking area or space as defined in rule 2(e) .

(2) Smoking area or space shall not be established at the entrance or exit of the hotel, restaurant and the airport and shall be distinctively marked as “Smoking Area” in English and one Indian language, as applicable.

(3) No service shall be allowed in any smoking area or space provided for smoking.

(3A) The owner, proprietor, manager, supervisor or in charge of the affairs of the hotel, restaurant or airport, shall display a board at the entrance of the smoking area or space of minimum size of 60x30 cm with a white background and having the message in English and one Indian language as applicable in



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black colour that-

(i) *tobacco smoking is harmful to your health and the health of non- smokers;*

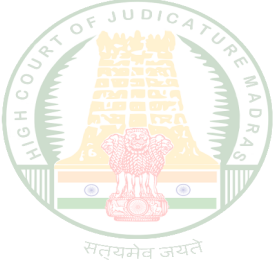
and

(ii) *entry of person below the age of eighteen years is prohibited.*

(4) The owner, proprietor, manager, supervisor or in charge of the affairs of a hotel having thirty or more rooms may designate separate smoking rooms in the manner prescribed as under:

a) all the rooms so designated shall form a separate section in the same floor or wing, as the case may be. In case of more than one floors/wings, the room shall be in one floor/wing as the case may be.

b) all such rooms shall be distinctively marked as “Smoking rooms” in English or one Indian language, as applicable.



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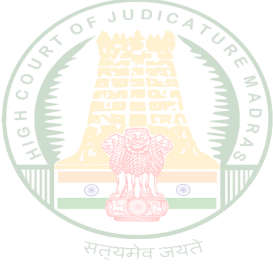
c) the smoke from such room shall be ventilated outside and does not infiltrate/permeate into the non-smoking areas of the hotel including lobbies and the corridors.

As per this Rule, smoking area or space mentioned in proviso to Section 4 of the Act shall mean a separately ventilated smoking area with the board “Smoking Area” in English or one Indian language.

12. The definition of 'smoking area or space' as defined under Rule 2(e) of the 'Prohibition of smoking in public places Rules, 2008' is as follows:

- (e) "smoking area or space" mentioned in the proviso to section 4 of the Act shall mean a separately ventilated smoking room that-*
- (i) is physically separated and surrounded by full height walls on all four sides;*
 - (ii) has an entrance with an automatically closing*

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door normally kept in close position;

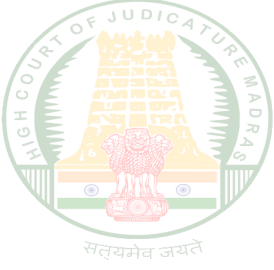
(iii) has an air flow system, as specified in Schedule

I,

(iv) has negative air pressure in comparison with the remainder of the building.

13. The combined reading of Rule 4 and the definition for the term 'smoking area or space' show that it should conform to the aforesaid specifications. That apart, they shall display a board at the entrance of the smoking field or area with minimum size of 60x30cm with white background with a message in English and in one Indian language in black colour that 'the tobacco smoking is harmful to your health and health of non smokers and the entry of the person below the age of 18 years is prohibited'. If the smoking area or space does not conform to the specifications aforesaid and Rule 4 of The Prohibition of Smoking in Public Places Rules, 2008, it is no doubt that the respondent police can prosecute the offender for violation of the provisions of the Act.

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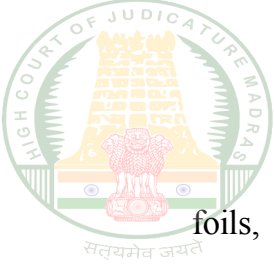
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14. In the case before hand, it is the case of the petitioner that the petitioner has a separate smoking area or space conforming to the standard specifications as per Rule 4 of The Prohibition of Smoking in Public Places Rules, 2008. However respondent police disputed this claim in the counter affidavit. The petitioner has produced, for the perusal of the Court, the photographs of the exclusive smoking zone. In the light of the contradictory position taken with regard to the availability of exclusive smoking area or space as specified under Rule 4 of The Prohibition of Smoking in Public Places Rules, 2008 and in the light of the judgment of the Honorable Supreme Court reported in **(2014) 15 SCC 689 (cited supra)**, this Court is of the view that a direction may be issued to the respondent police not to interfere with the petitioner's running the restaurant in "Kafe Latte" along with Hookah service, if hookah service is provided in a smoking area or space conforming to Rule 4 of the The Prohibition of Smoking in Public Places Rules, 2008.

15. With regard to the registration of First Information Report in Crime No.246 of 2022, it is seen that hookah pots, Tubes, Alufo-Aluminium

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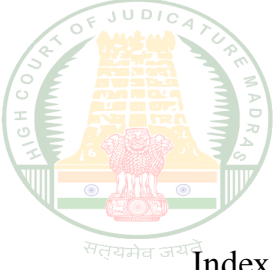
foils, premium coconut charcoal were alone found. We have seen that smoking through hookah is not prohibited as per the judgment of the Honorable Supreme Court reported in *(2014) 15 SCC 689 (cited supra)*. Therefore the registration of this First Information Report appears to be on the wrong understanding of the provisions of the Act and Rules.

16. In view of the reasons stated above, this Court disposed this writ petition with a direction to the respondent police not to harass the petitioner or his staff and also not to interfere with the petitioner's running of restaurant "Kafe Latte" along with Hookah service, if the Hookah service is being run conforming to the provisions of "Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act, 2003" and also "The Prohibition of Smoking in Public Places Rules, 2008". If there is violation of any provisions under this Act, it is open to the respondents to take appropriate legal action.

14.02.2023

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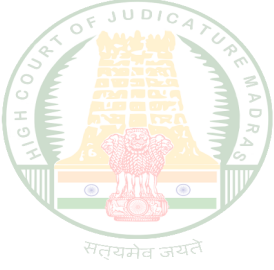
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Index :Yes
Internet:Yes
Speaking Order : Yes

To

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3. The Assistant Commissioner of Police (Nungambakkam Range)
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4. The Inspector of Police
F-4, Thousand Lights Police Station
Chennai.
5. The Public Prosecutor,
Madras High Court,
Chennai.

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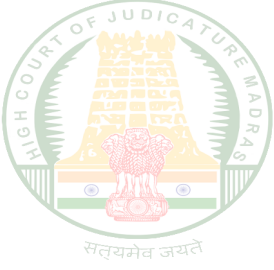
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G.CHANDRASEKHARAN,J.

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order in
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