

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Crl.MC.No. 6655 of 2014 ()

**IN ST 2813/2014 of J.M.F.C.-I, ALUVA
CRIME NO. 2981/2013 OF ALUVA POLICE STATION , ERNAKULAM**

PETITIONER(S)/PETITIONERS/ACCUSED:

- 1. BABU E.T. AGED 50 YEARS
S/O THOMMY, ERALI HOUSE, SUB JAIL ROAD
ALUVA KARA, ALUVA WEST VILLAGE, ERNAKULAM DISTRICT.**
- 2. VASUDEVAN AGED 49 YEARS
S/O MADHAVAN, VELIYATHUPARAMBIL (H), ASHOKAPURAM KARA
ALUVA WEST VILLAGE.**
- 3. RASSAK AGED 43 YEARS
S/O MUHAMMED, CHERUPARAMBIL (H), MALAYANKADU BHAGAM
KEEZHMADU KARA, ALUVA EAST VILLAGE.**
- 4. HAREESH AGED 43 YEARS
S/O THANKAPPAN, CHARAMPILLY (H), WEST KADUNGALLOOR
ALANGADU VILLAGE.**
- 5. K.A.JAIMY AGED 47 YEARS
S/O ANTHONI, KANIYOTTIKKAL (H)
NEAR SAHRDA SADAN MADAM, CHUNGAMVELI KARA
ALUVA EAST VILLAGE.**
- 6. K.K.KUNJUMON AGED 48 YEARS
S/O KURUMBAN, KOTTEKATTIL (H), EDATHALA KARA
CHOONDI BHAGAM, ALUVA EAST VILLAGE.**
- 7. DASAN AGED 52 YEARS
S/O KARUPPAN, PARAPPARAMBIL (H), EDAYAPPURAM KARA
ALUVA EAST VILLAGE.**
- 8. V.V.DOMINIC AGED 71 YEARS
S/O VAREETH, VALIYAVEETIL HOUSE, CHOONDI KARA
NEAR WAREHOUSE, ALUVA EAST VILLAGE.**

BY ADV. SRI.C.AJITH KUMAR (KALLESSERIL)

RESPONDENT(S)/RESPONDENT:

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM-682031. (CRIME NO.2981 OF ALUVA POLICE STATION)**

R BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 6655 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1: CERTIFIED COPY OF THE FIR IN CRIME NO.2981 DATED 23.8.2013 OF ALUVA POLICE STATION.

ANNEXURE 2: CERTIFIED COPY OF THE SEIZURE MAHAZAR IN CRIME NO.2981 DATED 23.8.2013 OF ALUVA POLICE STATION.

ANNEXURE 3: CERTIFIED COPY OF THE CHARGE SHEET FILED BY THE POLICE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ALUVA.

ANNEXURE 4: COPY OF THE REGISTRATION CERTIFICATE OF ALUVA CLUB.

ANNEXURE 5: COPY OF MEMORANDUM OF ASSOCIATION AND BYE LAW OF THE ALUVA CLUB.

ANNEXURE 6: COPY OF THE RENT DEED 17.7.2013 ENTERED INTO BETWEEN THE 1ST PETITIONER AND SECRETARY OF THE CLUB.

ANNEXURE 7: COPY OF THE JUDGMENT DATED 30.1.2014 IN WPC NO.30407/2013 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PATO JUDGE
sab

P.UBAID, J.

Crl. M.C No.6655 of 2014

Dated this the 20th day of March, 2015.

O R D E R

The petitioners herein are the accused in S.T No.2813 of 2014 of the Judicial First Class Magistrate Court-I, Aluva. They have been facing prosecution under Sections 7 and 8 of the Kerala Gaming Act, 1960. They have brought this proceeding under Section 482 Cr.P.C to quash the whole prosecution on the ground that the alleged place of incident is not in fact a common gaming house, as defined under the law. The learned counsel for the petitioner cited a decision that gaming in a private building will not come under the Kerala Gaming Act. No doubt, the position is settled, that gaming in such building will not be punishable, if the building or place of incident does not satisfy the definition of common gaming house. This is a case where some properties were seized by the police on search in the alleged premises. Those properties include playing cards also. Whether the alleged place of incident will satisfy the definition of common gaming house, is a matter to be decided by the trial court. Section 6 of the Kerala Gaming Act provides that any cards, dice, gaming tables, cloths or

other instruments of gaming found in any place entered or searched under Section 5, shall be evidence, until the contrary is proved, that such place is used as a common gaming house. This is a case where such materials were seized by the police on search in the premises. The learned counsel submitted that, to attract the presumption or conclusive evidence under section 6, the search must have been conducted in accordance with Section 5. Here the search was conducted by an authorized officer. Whether the search was conducted in compliance of the requirements and provisions of Section 5 is also a matter to be looked into and decided by the trial court. When section 6 of the Kerala Gaming Act declares the law that any cards, dice etc seized on search by the authorized officer shall be evidence until the contrary is proved, that such place is used as a common gaming house, the case advanced by the petitioners in this proceeding cannot be entertained by this court under Section 482 Cr.P.C. On trial and on the basis of materials produced by the prosecution, including the articles recovered or seized by the police officer, the trial court will have to decide whether those articles are in fact articles or materials used for gaming purposes, whether search was made in compliance of the

provisions of section 5 of the Gaming Act, and whether the alleged place of incident will satisfy the definition of common gaming house. The petitioners will have to raise all their objections, factual and legal, before the trial court. The trial court will have to take a decision appropriately, whether Section 6 of the Kerala Gaming Act can be applied in this case, and whether the alleged place of incident satisfies the definition of common gaming house.

In the result, this petition is dismissed in limine without being admitted to files, of course without prejudice to the right of the petitioners to raise all their factual and legal objections and defence, before the trial court.

**P.UBAID,
JUDGE**

sab