

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.1371 of 2015

ORDER:

The petitioners/A.4, A.6, A.12, A.17, A.19, A.28, A.31 and A.38 in this petition filed under Sec.482 Cr.P.C, seek to quash the proceedings in S.T.C.No.111 of 2014 on the file of II Additional Judicial First Class Magistrate, Mancherial.

2) The Police of Mancherial P.S laid charge-sheet against A.1 to A.38 in Crime No.112 of 2014 for the offences under Sec.3 & 4 of A.P Gaming Act, 1974 (for short "the Act").

3) The allegations are that Mancherial Club is situated at Hi-Tech City road, Mancherial in a permanent building which belongs to Mancherial club members. It was registered under Certificate of Registration No.124/1962. The Club is having membership of about 584 members. The authorities collected Rs.1,00,000/- per head towards membership fee. A.1 and A.2 are the body members. The management issues plastic coins to the worth of the amount deposited by the member players and non-member players whoever comes to the club for playing cards for profit and also collecting amounts towards profit of the club.

4) While-so on 11.03.2014, LW.23—the Inspector of Police, Mancherial on credible information that the club management has been running common gaming house, obtained warrant from SDPO, Mancherial and raided the club and found the accused playing game of chance/luck with playing cards and betting money in the form of plastic coins for profit in the said common gaming house. They were also found contributing money towards club profit. LW.23 with his staff caught hold the accused and seized the amount of Rs.3,97,230/- along with Gaming instruments such as 5 sets of playing cards, each set containing 52 cards and mobile phones and plastic coins, round wooden tables, wooden chairs etc., and recorded the confessional statements of the accused. Hence the charges under Sec.3 & 4 r/w Sec.6 of the Act.

5) Denying the allegations, it is argued on behalf of the petitioners that even assuming that the accused were found playing cards for profit that would not amount to an offence under Sec.3 or 4 of the Act since they were playing rummy which is a game of skill and the offences envisaged under Sec.3 & 4 of the Act are not attracted to the game of skill in view of Sec.15 of the Act. In this context, he relied upon the common order dated 09.09.2011 in W.P.Nos.24533, 25043, 25053, 25395 and 25404 of 2011 passed by this High Court. He contended that continuation of proceedings would amount to abuse of process of law and he thus prayed to quash the proceedings.

6) Learned Special Addl. Public Prosecutor opposed the petition contending that the accused were found playing game of chance/luck with playing cards by betting the amount and therefore, they have committed offence under Sec.4 of the Act and hence, the petition is not maintainable.

7) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

8) **POINT:** On a perusal of the record I find force in the submission of learned counsel for petitioners. Though Gaming is an offence under Sec.4 of the Act, Sec.15 stipulates that nothing in the Act shall apply to the games of skill only wherever played. In the cited judgment, a learned Single Judge of this High Court considering various judgments of Hon'ble Supreme Court as well as this High Court has held that rummy is mainly and preponderantly a game of skill but not a chance and therefore, the offences under Sec.3 or 4 of the Act will not attract to the said game. In the instant case, the Investigating Officer except mentioning that the accused were playing game of chance/ luck, did not give the particulars of that game. In the absence of such clarification, it cannot be concluded that the accused were playing game of chance/luck only with the playing cards. On the other hand, the contention of the petitioners is that they were playing rummy which was a game of skill and therefore, it was

not an offence. As there was no clarity in the charge-sheet on the crucial aspect of the nature of the game, the contention of the petitioners has to be accepted, in which case, the continuation of the proceedings would amount to abuse of process of law.

9) Accordingly, this Criminal Petition is allowed and the proceedings in S.T.C.No.111 of 2014 on the file of II Additional Judicial First Class Magistrate, Mancheri are quashed. Learned Magistrate is directed to return the seized property to the concerned accused upon establishing their claim before him.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.03.2015

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