

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.17081 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in S.T.C.No.657 of 2015 on the file of Judicial Magistrate of First Class, Mydukur, Y.S.R. District, registered for the offences punishable under Section 9(1) of the A.P. Gaming Act, 1974 (for short 'the Act').

2. The petitioners challenged the proceedings on two grounds. The first ground is that the offence punishable under Section 9(1) of the Act is a special enactment and non-cognizable and bailable, without permission from the Magistrate having jurisdiction over the area, the police cannot investigate into the offence and file charge sheet in view of the power under Section 155(2) of the Code of Criminal Procedure (for short 'Cr.P.C.').

3. The second ground is that the petitioners are watching cricket match between India v. South Africa and indulging in betting inside the house, thereby Section 5 of the Act alone applicable and not Section 9(1) of the Act. But to overcome the difficulty to follow the procedure under Section 5 of the Act, the police invented a story of watching T.V. in front of the house, in the street and indulging in cricket betting, thereby Section 5 of the Act alone applicable. The police failed to follow the procedure to arrest and search the gaming house and

consequently the proceedings are vitiated and liable to be quashed.

4. During the course of hearing Sri V.R.Reddy Kovvuri, learned counsel for the petitioners drawn the attention of the Court that Section 155(2) Cr.P.C., Schedule II of C.P.C regarding classification of offences under other laws. With regard to the offences under Special enactment, the offence punishable under A.P. Gaming Act is only non cognizable and the police cannot investigate in to the offence. He also drawn the attention of the Court to Sections 5 and 9(1) of the Act and that the police did not follow the procedure under Section 5 of the Act and to overcome the defect, the police invented the story of betting in street. When the police acted in derogation of the provisions of A.P. Gaming Act, the proceedings are liable to be quashed to protect the rights of the public, exercising inherent power under Section 482 Cr.P.C.

5. Per contra, learned Additional Public Prosecutor for the State of Andhra Pradesh would drawn the attention of the Court that Section 10 of the Act which permits the police officer to arrest the accused without any warrant and also drawn the attention of this Court to the contents of charge sheet which clearly indicates that the offences allegedly took place in the street, not in the gaming house, thereby Section 5 of the Act has no application and only Section 9(1) of the Act is applicable and prayed to dismiss the petition.

6. Undisputedly, the charge sheet is filed against the petitioners for the offence punishable under Section 9(1) of the Act and it deals with penalty for gaming or setting birds or animals to fight in public street or place.

7. Here the allegations made in the charge sheet are that on 06.11.2015 at 10.00 AM LW.9 received credible information about the cricket betting and on that he secured mediators, informed them and requested to act as mediators and that after obtaining their consent, at about 10.10AM, he along with mediators and his staff reached in front of Udayagiri Mabu House bearing Door No.2/114, Main Bazar, Khajipt Town and Mandal and on seeing arrival of police, the petitioners attempted to conceal their presence by hiding in the said place and then the police party surrounded and detained them and later seized various items including T.V, mobiles and cash.

8. It is the contention of the petitioners that the alleged offence took place inside the house since T.V. cannot be watched in the street or lane, which is a disputed question of fact and it cannot be decided at this stage while exercising power under Section 482 Cr.P.C. When the place of occurrence is in dispute, it is to be established by adducing evidence only and on that ground it is difficult to conclude at this stage that Section 5 of the Act alone is applicable and not Section 9(1) of the Act. While deciding the application under Section 482 Cr.P.C., the Court has to verify the allegations made in the charge sheet or complaint and the material

connected to the charge sheet or complaint and not more than that. In **State of Orissa and another v. Saroj Kumar Sahoo**¹ the Apex Court held that while exercising jurisdiction under Section 482 Cr.P.C. it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only *prima facie* satisfy about the existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate the material and documents on record, but it cannot appreciate evidence. The Court has not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. Even in **Dhanalakshmi v R.Prasanna Kumar**² and **Ganesh Narayan Hegde v S.Bangarappa and others**³, the Apex Court consistently held that the inherent power has to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the Court exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. Thus, in view of the limited power conferred on this Court, this Court can analysis the documents on record and other allegations made in the charge sheet to find out

¹ 2005(13)SCC 540² AIR 1990 SUP.SCC 686³ AIR 1995(4) SCC 41

existence of any grounds to proceed against the petitioner that is limited purpose, not for other purpose.

9. In the present facts of the case, the dispute is whether the offence took place in the lane or in the house to attract either Section 9(1) or Section 5 of the Act. Such disputed question cannot be decided while exercising inherent power under Section 482 Cr.P.C. Therefore, as on today as per allegations made in the charge sheet, the offence allegedly took place in front of the house bearing Door No.2/114, Main Bazar, Khajipt Town and Mandal, which is open place accessible to the public and thereby *prima facie* it would attract offence punishable under Section 9(1) of the Act.

10. The other contention raised before this Court is that in view of specific bar under Section 155(2) Cr.P.C. the police cannot investigate into the offence and file charge sheet without obtaining prior permission of the Magistrate since it is non-cognizable. The charge sheet is filed for the offence under Section 9(1) of the Act. Section 10 of the Act deals with power of the police officer to arrest without warrant for gaming or setting birds or animals to fight in public street or place and to seize moneys, instruments of gaming birds and animals. As per Section 10(1) of the Act any police officer may arrest and search without warrant any person referred to in section 9. Therefore, the offence punishable under Section 9(1) of the Act is a cognizable offence as defined under Section 2(c) of Cr.P.C.

Section 2(c) of Cr.P.C. defines the cognizable offence, it means an offence for which, and cognizable case means a case in which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. Section 2(l) of Cr.P.C. defines non-cognizable offence means an offence for which, and non-cognizable case means a case in which, a police officer has no authority to arrest without warrant.

11. On a cogent reading of the definition of cognizable offence and non-cognizable offence under Sections 2(c) and 2(l) of Cr.P.C. it is clear that when a police officer is authorized to arrest a person without warrant can be said to be a cognizable offence. Schedule I, Column 4 of the Code enumerates the offences under I.P.C, which are cognizable and which are non-cognizable. Under Part-II of Schedule the offences under other laws punishable with imprisonment of three years or upwards shall be cognizable offences unless a contrary provision is made under the law. The words “or under any other law for the time being in force” Section 2(c) of the Code have reference to such offence, which are punishable with imprisonment less than three years, but are specified as offence for which the police may arrest without warrant, that offences which but for the special provisions would not under the Code be cognizable offence. The words “or under any other law for the time being in force” used in Section 2(c) are wide enough to include an express or implied provision of any law or enactment. As per

Section 10 of the Act the police officer is competent to arrest a person, who indulged in such gaming without any warrant for arrest of any person and seizure of any property.

12. Therefore, the offence punishable under Section 9(1) of the Act is a cognizable offence and thereby power under Section 155(2) of Cr.P.C has no application. A similar case came up before the Division Bench of this Court in **Public Prosecutor v A.V.Ramaiah**⁴. This Court while dealing with an identical question regarding dismissal of the complaint concluded that even if any cognizable offence is investigated and filed a report, it would fall within the definition of complaint under Section 2(d) of Cr.P.C., but not a report of the police officer under Section 173 Cr.P.C. Hence, there is no any illegality. The Court also placed reliance on the earlier judgment in **Mallikharjuna Prasad Rao v Emperor**⁵ where the Court defined the word ‘complaint’ and police report Justice Burn observed that the report of the police officer in the case was a “complaint” as defined in the Criminal Procedure Code. It could not be considered to be such a police report as is excluded from the definition of a complaint in Section 4(1)(h) of the Cr.P.C, because that kind of report can only be made by the police in cognizable cases. This is quite obvious. If the cases were otherwise, it would lead to the absurd conclusion that no police officer can ever make a complaint. If the principle laid down by Justice Burn in **Mallikharjuna Prasad**

⁴ AIR 1958 AP 392

⁵ 1933 Mad WN 876

Rao's case 5th cited is applied at the behest of the report filed by the police, it can be treated as a compliant, not as a police report under Section 173 Cr.P.C.

13. The Supreme Court in **State of Gujarat and another v. Lalsingh Kishansingh**⁶ while dealing with Sections 4, 5 and 6 of the Bombay Prevention of Gambling Act which permits the Police Commissioner and certain other officers, mentioned therein, have the power and authority to arrest persons accused of having committed the offences under Sections 4 and 5 of the Act without warrant the said offences are cognizable. In para 11 of the Judgment, the Supreme Court observed as follows:

“It will be noted further that even under Sub-clause (iii), in an area notified by the Government, any police officer not below the rank of a Sub-Inspector empowered by the District Magistrate under a general order in writing can arrest a person found gambling or present in a common gaming house, without a warrant from a magistrate. In short, Section 6 confers the power of arrest thereunder only on a specified class of police officers and not on any or every police officer.”

14. In **Queen Empress v Deodhar Singh**⁷ a similar question had arisen under the Bengal Public Gaming Act II of 1867. The question turned on an interpretation of the expression ‘police officer’ in the definition of ‘cognizable offence’, and was answered in the affirmative.

⁶ AIR 1981 SC 368

⁷ MANU/WE/0110/1899

15. Thus, in view of the specific provision under Section 10 of the Act the offence punishable under Section 9(1) of the Act is a cognizable offence as defined under Section 2(c) of Cr.P.C. and thereby there is no irregularity or illegality in the official report by the investigating agency before the Magistrate. Therefore, on that ground, the proceedings cannot be quashed, as the offence punishable under Section 9(1) of the Act is cognizable in view of Section 10 of the Act bar under Section 155(2) Cr.P.C. has no application, consequently, the contention regarding compelling is unsustainable.

16. The jurisdiction of this Court under Section 482 Cr.P.C. is limited and such power can be exercised in exceptional circumstances to give effect of the orders passed by this Court to prevent abuse of process of Court or to meet the ends of justice. If the allegations made in the charge sheet or complaint on its face value in its entirety do not *prima facie* constitute any offence, the proceedings can be quashed as held by the Apex Court in **State of Haryana v Ch Bhajanlal**⁸, similarly in **R.P.Kapur v State of Punjab**⁹.

17. In view of the limited jurisdiction of this Court, the disputed question of fact is whether the incident took place either in the lane or in public place or in a closed house cannot be decided since it is a question of fact. Therefore, leaving it open to the petitioners to raise all these contentions before the

⁸ AIR 1992 604

⁹ (1960) 3 SCR 388

Magistrate during trial and the criminal petition is liable to be dismissed as it is devoid of merits.

18. In the result, the criminal petition is dismissed at the stage of admission, however, granting liberty to the petitioners to raise all these questions before the Magistrate during trial.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

27.12.2016
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M.SATYANARAYANA MURTHY,J