

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.3046 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order of the first respondent in Proceedings No.D/166/2016, dated 23.11.2016.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. The contention of the learned counsel for the petitioner is that the Executive Magistrate has no right whatsoever to pass the order under Section 133 Cr.P.C. He further submitted that the impugned order is passed without giving an opportunity to the petitioner.

4. *Per contra*, the learned Public Prosecutor submitted that the petitioner is using the premises for playing cards; therefore, the Executive Magistrate is justified in passing the impugned order.

5. Now the point that arises for consideration is:

Whether the order passed by the Executive Magistrate is sustainable or not?

6. A perusal of the record reveals that the petitioner is a tenant of house bearing No.7-170/5, Plot No.12, near Maisamma Temple, Pedda Amberpet Village, Abdullapurmet Mandal and has been carrying on business in the name and style of "Hinduja Multi Disposal" in the said premises. It is the case of the prosecution that the petitioner is using the premises for playing cards. A perusal of the record further reveals that the police also raided the

premises of the petitioner and seized an amount of Rs.4,66,110/- along with eight cell phones and registered a case in Crime No.1093 of 2016 for the offences punishable under Sections 3 and 4 of the Andhra Pradesh Gaming Act, 1974. It also reveals that the Executive Magistrate passed the final order without giving an opportunity to the petitioner. Whether the Executive Magistrate was specially empowered to pass orders or not is a disputed question of fact, which cannot be gone into in this revision. The principles of natural justice require the competent authority to give a reasonable opportunity to the affected parties before passing of the order. In the instant case, for one reason or other, the Executive Magistrate passed the final order without giving an opportunity to the petitioner to put forth his explanation. Passing of any order in violation of the principles of natural justice is *non est* in the eye of law.

7. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to allow the revision.

8. In the result, the Criminal Revision Case is allowed setting aside the order of the first respondent in Proceedings No.D/166/2016, dated 23.11.2016. The competent authority is at liberty to pass appropriate orders after giving a reasonable opportunity to the petitioner.

9. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 15.12.2016
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