

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2454 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed assailing the order, dated 28.08.2017, passed in CrI.M.P.No.2777 of 2017 in S.R.No.2070 of 2017 in C.C.No.1286 of 2016 by the XIV Additional Chief Metropolitan Magistrate, Hyderabad.

2. The petitioner is arrayed as accused No.1 in the aforesaid Calendar Case. The allegation made against him is that he along with others were playing cards in Room No.508 in Haritha Plaza, Manjeera Guest House, Hyderabad, using the room as 'Common gaming house'. On receipt of credible information, the police went to Room No. 508, Haritha Plaza, 5th floor, opp to Green Lands building and found some persons playing three cards, which is a game of chance by collecting amount. The police seized the cash, cards, cell phones etc under the cover of panchanama. After completion of investigation, the police filed charge sheet against the petitioner and others for the offences referred supra.

3. The petitioner/accused No.1 filed petition under Section 239 Cr.P.C., to discharge him for the offences punishable under Sections 3 and 4 of Andhra Pradesh Gaming Act, 1974 (for short, 'the Act'). The Court below, by impugned order, dated 28.08.2017, dismissed the petition stating that whether the material on record would satisfy the ingredients of Sections 3 and 4 of the Act cannot be decided at this stage and disputed question of fact has to be decided only at the end of trial.

4. Aggrieved by the order passed by the Magistrate, the present revision case is filed on various grounds. The main contention of learned counsel for the petitioner before this Court is that the allegations made in the charge sheet coupled with material produced along with the charge sheet do not disclose any *prima facie* material to proceed against the petitioner; that even assuming for a moment that Room No.508 in Haritha Plaza is a 'Common gaming house', the prosecution is groundless and therefore, the petitioner is entitled to be discharged for the aforesaid offences. He also placed strong reliance on the Judgment of Karnataka High Court in **K.N.Suresh v. State of Karnataka**¹ and un-reported Judgment in **Vishwanath v. State of Karnataka** (Criminal Petition No.5683 of 2014) and prays the Court to allow the revision case by setting aside the order impugned.

5. On the other hand, learned Additional Public Prosecutor for the State of Telangana contended that the disputed question of fact can be decided only after full-fledged trial, at this stage, this Court cannot decide whether the place where the accused was found is a 'common gaming house' and placed reliance on the Judgment of Apex Court in **Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and Another**².

6. As seen from the allegations made in the charge sheet, petitioner along with others playing cards in a common gaming house. 'Common gaming house' is defined under Section 2 (1) of the Act, which consists of various clauses. Learned counsel for the

¹ Laws (KAR)-2011-11-15

² (2013) 11 Supreme Court Cases 476

petitioner only relied on Sub clause (ii) of Section 2 (1) of the Act, which reads as follows:

“(i)

.....

(ii) in the case of any other form of gaming, any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel or place, whether by way of charge for the use of such house room, tent, enclosure, vehicle, vessel or place or instruments of gaming or otherwise howsoever.”

7. The word ‘gaming’ is also defined in Section 2 (2) of the Act, which reads as follows:

“gaming means playing a game for winnings or prizes in money or otherwise and includes playing a game of mutka or satta, and lucky board and wagering or betting, except where such wagering or betting takes place upon a horse-ract-

- (i) on the day on which the horse-race is to be run;
 - (ii) in an enclosure which the stewards controlling the horse-race or race meeting have, with the sanction of the Government set apart for the purpose; and
 - (iii) (a) with the licensed book maker; or
(b) by means of a totalisator;
- but does not include a lottery;”

8. The word ‘Common gaming house’ was considered by this Court in ***Patamata Cultural and Recreation Society v. Commissioner of Police, Vijayawada, Krishna District and others***³ and also in ***Twin Cities Cinema Cultural Centre v. Commissioner of Police***⁴.

³ 2005 (1) ALD 772

⁴ 2002 (2) ALD 232 (AP)

9. The word 'Common gaming house' defined in Section 2 (3) of Karnataka Police Act is identical to the definition of word 'Common gaming house' in Andhra Pradesh Gaming Act. But, the trial Court postponed the decision on the ground that the said disputed question of fact can be decided only at the end of the trial. In **Vishwanath's case** at para 8, it was held thus:

"6. Looking to the facts and circumstances of the said case and also the present case, they almost stand on the same footing. Therefore, I don't find any strong reasons to differ from the above said decisions. Hence, this petition also deserves to be allowed as in this case also there is no complaint lodged by anybody stating that the accused have converted their house into a 'common gaming house'. It appears no other public have got any access to the house of these persons for the purpose of playing the said game. Under the above circumstances, I am of the opinion that the petition deserves to be allowed and the proceedings deserves to be quashed."

10. According to section 239 of Cr.P.C., upon considering the police report and documents sent with it under Section 173 Cr.P.C. and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word "groundless" would

mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in **“P.Vijayan v. State of Kerala”**².

11. In view of limited scope under Section 239 Cr.P.C., the duty of the Magistrate is to verify the material produced under Section 173 Cr.P.C., along with the charge sheet and decide whether there are any grounds to proceed further in framing charges or if the Magistrate finds that there is no sufficient material or prosecution is groundless, the Magistrate is bound to discharge the petitioner for the offences referred supra, with which he was charged, instead of following the necessary procedure contemplated under Section 239 Cr.P.C., the learned Magistrate postponed the decision whether the place where the accused was found in Room No.508,

Haritha Plaza is a 'common gaming house' within the definition of Section 2 (1) of the A.P. Gaming Act. Therefore, the Magistrate has not exercised his discretion properly in deciding the application under Section 239 Cr.P.C. Hence, the order passed by the Magistrate is hereby set aside.

12. Accordingly, the Criminal Revision Case allowed setting aside the order, dated 28.08.2017, remanding the matter to the learned Magistrate to decide application afresh, in accordance with law, keeping in mind the scope of Section 239 Cr.P.C., within a period of one month from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

SEPTEMBER 14, 2017
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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 14.09.2017

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