

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2412 OF 2017

ORDER:

All the ten petitioners herein, who are arraigned as accused persons in S.T.C. No.168 of 2017 on the file of Judicial Magistrate of Second Class, Mahabubnagar, filed the present petition under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the proceedings.

2. The facts have been that under the instructions of the Trainee Collector, Mahabubnagar, the Revenue Inspector, Tahsil Office, Mahabubnagar conducted raid on 9.3.2014 on the District Club as there was authentic information that illegal activities were going on in the said club, as such himself and his staff causing enquiry and noticed eight persons in two groups were playing three cards on bet and he seized cash of Rs.3,990/- and 104 play cards under a cover of panchanama and lodged the complaint; and basing on the said complaint, Station House Officer registered a case in Crime No.59 of 2014 under Sections 3 and 4 of A.P. Gaming Act, 1974 (for short, 'the Act') and took up investigation. Accused No.9 is the President of the District Club and Accused No.10 is the Secretary of the District Club and they allowed the other accused persons to play cards on bet and were getting Rs.100/- on each game as goodwill. Of course, having conducted investigation by following the procedure laid down under Section 41-A of the Code, charge sheet was laid.

3. Heard Sri H. Krishna Mohan, the learned counsel for the petitioners and the Additional Public Prosecutor for the State of Telangana.

4. The learned counsel for the petitioners would submit that the provisions of Section 5 of the Act mandate that the competent authority shall be salaried Judicial or Executive Magistrate or any police officer not below the rank of Assistant Commissioner of Police, within the area under the jurisdiction of Commissioner of Police, Hyderabad and a Deputy Superintendent of Police, elsewhere, to issue warrant to any person authorizing to any police officer not below the rank of Sub-Inspector to enter into a common gaming house for the purpose of inspection, and since in the present case the Trainee Collector, Mahabubnagar said to have authorized the Revenue Inspector, Tahsil Office, to raid itself is illegal, unlawful and, therefore, to quash the proceedings for want of competent authority to file the complaint.

5. The learned counsel for the petitioners would also submit that as per judgment of this Court and as confirmed by the Hon'ble Supreme Court playing thirteen card rummy is not prohibited and moreover, the inspected premises is none other than the registered District Club, which was registered in the year 1974 with Registration No.528/1974 and moreover with 104 cards, play of three cards is a different set up and it would be played with only 24 cards and, therefore, the seizure of 104 cards could be presumed that the

members of the club had been playing only 13 cards rummy, but not three cards play.

6. His next submission is that Section 5 of the Act would mandate that it is only the Sub-Inspector of Police, who is authorized to inspect gaming house, but, in the instant case the Revenue Inspector, who is not at all competent to enter into District Club, Mahabubnagar, filed complaint with incorrect allegations.

7. The learned counsel would submit that the District Club, Mahabubnagar is having good reputation in the society and all the leading advocates practicing at the District Court, Mahabubnagar, and higher officials working in the Revenue and the Police Department are the members of the club; and the District Club, Mahabubnagar conducted number of programmes for the benefit of citizens of Mahabubnagar town, and, therefore, filing of charge sheet by incompetent authority against the members of the club is illegal, unlawful and liable to be quashed.

8. He would submit that the police ought not to have registered a case and ought to have rejected the complaint of a Revenue Inspector on the mere ground that he was not competent to lay the complaint. The learned counsel also would contend that the members were playing 13 cards rummy with total 104 cards, Station House Officer, without verifying the same, foisted a false case.

9. The learned counsel places reliance in **Executive Club formed by Lalitha Real Estate Pvt. Ltd., Vijayawada v. State of Andhra Pradesh**¹ and **D. Krishna Kumar v. State of Andhra Pradesh**².

10. The learned Additional Public Prosecutor for the State of Telangana, on the other hand, would submit that the Trainee Collector, Mahabubnagar District, who issued instructions to the Revenue Inspector and the raid conducted by the Revenue Inspector cannot be said to be illegal since the salaried Executive Magistrate is also competent authority under Section 5 of the A.P. Gaming Act, 1974. His submission is that the petitioners were playing game on bet and they were actually playing three cards in two groups, and, therefore, the rulings relied on by the learned counsel for the petitioners are inapplicable.

11. In **Executive Club formed by Lalitha Real Estate Pvt. Ltd., Vijayawada** (1 supra), a learned Single Judge of this Court declared that Rummy is not a game of mere chance as neither the persons who play the game nor the person who collects amounts on behalf of the club for its maintenance can be prosecuted, as the provisions of the Act are inapplicable. Learned Single Judge has relied on the rulings in *K.R. Lakshmanan v. State of Tamil Nadu* [1996 Cri. L.J. 1635], and *State of Andhra Pradesh v. K. Satyanarayana*

¹ 1998 (5) ALD 126

² 2003 CRI. L. J. 143

[AIR 1968 SC 825] and *State of Bombay v. R.M.D. Chambaugwala*

[AIR 1957 SC 699]. The expression of learned Single Judge contained

in paragraph-8 is thus:

“8. The Apex Court in the *State of Andhra Pradesh v. K.Satyanarayana* (AIR 1968 SC 825), had an occasion to consider the very same question under the Hyderabad Gambling Act (2 of 1305 Fasli), the provisions of which Act are more or less similar to that of Public Gambling Act, 1867 in force in India. It was also a case where the Members in a particular club were found playing the game of Rummy. The Apex Court observed that "the game of Rummy is not a game entirely of chance like 'three-card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact, in all games in which cards are shuffled and dealt out there is an element of chance because the distribution of cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack.”

Concerning the persons in management of the club, His Lordship observed in paragraph-13 thus:

“13. In such view of the matter the mere fact that petitioner Nos. 50 to 52 have collected some amounts for the maintenance of the card room on behalf of the first petitioner-club, itself, would not make the card room located in the first petitioner-club a gaming house.

With Regard to the Allegation of High Stakes

In *K.R.Lakshmanan v. State of Tamilnadu*, 1996 CrI.LJ 1635, the Apex Court while considering the provisions of the Tamilnadu Gaming Act (3 of 1930) and the Madras City Police Act (3 of 1888), in the matter - whether running of horse races by the club is a game of 'chance' or a game of 'mere skill' and as to what would amount to 'gambling' and after referring to *Chambaugwala*, (AIR 1957 SC 699) and *State of A.P.* case (supra) held:

"(i) the competitions where success depends on substantial degree of skill are not 'gambling' and (ii) despite there being an element of chance if a game is preponderantly a game of skill it would nevertheless be a game of "mere skill". We, therefore, hold that the expression "mere skill" would mean substantial degree or preponderance of skill".

12. While observing that Rummy is not a game of mere chance, which is preponderantly a game of skill and it may include an

element of chance and it would nevertheless be a game of 'mere skill' within the meaning of Section 15 of A.P. Gaming Act, 1974, held in paragraph Nos.15 & 16 thus:

"15. It is thus obvious that the game of Rummy is not a game of mere chance; but a game which is preponderantly a game of skill. It may include an element of chance and it would nevertheless be a game of 'mere skill' within the meaning of Section 15 of A.P. Gaming Act, 1974. Thus, the applicability of Sections 3 and 4 of A.P. Gaming Act, 1974, is excluded insofar as it relates to the game of Rummy. Once it has to be held that the provisions of the Act are not applicable, whatever may be the stakes involved in playing such game would not be of any consequence.

16. Thus, it is clear that the card room or rooms within the precincts of the first petitioner-Executive Club, Vijayawada, cannot be said to be a 'gaming house' as long as the game of thirteen cards (Rummy) is played by the members or the guests or both, as the case may be. The cards used for playing the game of thirteen cards (Rummy) cannot be said to be 'instruments of gaming'. Therefore, even if the petitioner Nos.2 to 49 were found playing thirteen cards (Rummy) in the premises of the first petitioner-club, they cannot be made liable for punishment under Section 4 of the Act. Likewise, no person connected with the affairs of the management of the first petitioner-club can be punished under Section 3 of the same Act."

13. In **D. Krishna Kumar** (2 supra), relied on by the learned counsel for the petitioners, another learned Single Judge of this Court, while observing that game of Rummy is mainly and preponderantly a game of skill, held that the provisions of the Act do not apply to it in view of Section 15, and even if the club is making profits by allowing persons to use the premises for playing game of Rummy with 13 cards/syndicate, it cannot be said to be running a 'common gaming house' under Section 3 of the Act.

14. In the present case, the main submissions of the learned counsel relate to (i) the competency of the Trainee District Collector, Mahabubnagar in issuing authorization; (ii) the very authority given to the Revenue Inspector or authorizing the Revenue Inspector of Tashil

Office to inspect the District Club and his (Revenue Inspector) lodging the complaint is in violation of the mandatory provisions of Section 5 of the Act; and (iii) that the thirteen cards (Rummy) is not prohibited and the very seizure of 104 cards indicate that the play of three cards as alleged by the *de facto* complainant does not arise, play of three cards is another set of play and it can be played only with 24 cards and thereby to draw presumption that the members had been playing thirteen cards Rummy, but not three cards play.

15. The learned Additional Public Prosecutor for the State of Telanagana has submitted the Case Diary and his submission is that there is clear evidence on record through the panchanama held by the Revenue Inspector and the statements recorded under Section 161 of the Code by the investigating officer i.e., the Sub-Inspector of Police, II-Town P.S., Mahabubnagar clearly indicating that the petitioners were involved in playing three cards game and there is no indication that they were really playing Rummy. However, the learned Additional Public Prosecutor could not place any authority as to whether the Revenue Inspector to whom authorization given by the Trainee District Collector can be equated with that of the Sub-Inspector of Police, as mandated by the provisions of Section 5 of the Act, and whether the raid conducted by the Revenue Inspector would not vitiate the entire proceedings.

16. So far as the third submission is concerned, whether the petitioners indulged in playing three cards game or the game of

Rummy, it is a disputed question of fact, which can only be resolved when full-fledged trial takes place.

17. Turning to the first submission that the Trainee District Collector is not the competent authority to issue authorization is, certainly, without any merit. The opening words “if any salaried judicial or executive Magistrate, or any police officer not below the rank of Assistant Commissioner of Police within the area under the jurisdiction of Commissioner of Police, Hyderabad and Deputy Superintendent of Police, elsewhere,” are sufficient to arrive at the view that the Trainee District Collector has to be invariably construed as Executive Magistrate, and, therefore, that submission is of no avail to quash the proceedings.

18. The second submission made by the learned counsel leads only to the authorization given to Revenue Inspector, which is in contravention of the second part of Section 5 of the Act. Second part of Section 5 of the Act reads thus:

“5. Powers to grant warrant to enter a common gaming house etc:-

(1)

(2) Any police officer having the power to issue a warrant under sub-section (1) may, instead of doing so himself exercise all or any of the powers exercisable under such warrant.”

19. Thus, sub-section (2) of Section 5 of the Act would indicate that any police officer having the power to issue a warrant may exercise all or any of the powers exercisable under such warrant without issuing any warrant. However, the question that arises for

consideration is whether the Revenue Inspector falls within the purview of the expression "any police officer not below the rank of Sub-Inspector" occurring in Section 5. Neither the learned counsel for the petitioners nor the Additional Public Prosecutor did place any authority to resolve the instant issue.

20. The term 'police officer' is not defined nor the meaning thereof is explained in any of the provisions of Andhra Pradesh Gaming Act, 1974. It is no doubt true that the expression of 'police officer' covers the person who is allowed to exercise the powers of a police officer and does not necessarily mean the person who is in-charge of police station, who is empowered to make investigation and the expression 'police officer' is not confined only to such officers who are appointed under the Police Act, but it includes also other officers who exercise same powers as that of a police officer of police station, in respect of certain offences. But, in the absence of any definition as to the term 'police officer' in the Gaming Act, it would be difficult to construe that Revenue Inspector would fall within the ambit of expression "any police officer not below the rank of Sub-Inspector" when the purposes for which warrant was issued giving authority to police officer are gauged as mentioned in the sub-clause extracted above, more particularly, when the expression 'police officer not below the rank of Sub-Inspector' is occurring in Section 5. Thus, it is difficult at this stage to view that the Revenue Inspector can be equated to either Sub-Inspector of Police or the Police Officer not

below the rank of Sub-Inspector of Police to whom authority can be given for conducting raid to do the acts provided in sub-clauses (i) to (iv) under Section 5 (1) of the Act.

21. It will be useful to refer to what is observed in paragraph-16 of the Hon'ble Apex Court in **State of Gujarat v. Lalsingh Kishansingh**³. The provisions of Section 6 (1) of the Bombay Prevention of Gambling Act which fell for consideration therein are almost identical with the provisions of Section 5 of the Andhra Pradesh Gaming Act, 1974. The Hon'ble Supreme Court was dealing with the expression 'police officer' in Section 4 (1) (f) of the Criminal Procedure Code, 1898 and Section 6 of the Bombay Prevention of Gambling Act, 1887 (Bombay Act 4 of 1887), while referring to Section 6 of Bombay Act confers the power of arrest thereunder only on a specific class of police officers and not on any or every police officer, held in paragraph-11 thus:

“11. It will be noted further that even under clause (iii), in an area notified by the government, any police officer not below the rank of 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.”

22. In paragraph-16 referring to the ruling in *Queen Empress v. Deodhar Singh* (1899 ILR 27 Cal 144, 150), *In re: Nagarmal Janakiram* [AIR 1941 Nag 338 : 196 IC 869 : 43 Cri L.J. 89] as to whether offences under Section 4 (1) (f) of the Bengal Act was

³ (1981) 2 SCC 75

cognizable which question turned on an interpretation of the expression "police officer" in the definition of 'cognizable offence', observed thus:

"16. In *Queen Empress v. Deodhar Singh* (1899 ILR 27 Cal 144, 150), under the Bengal Public Gaming Act 11 of 1867, the District Superintendent of Police (or the District Magistrate) was competent to arrest or by warrant to direct the arrest of persons found in a common gaming house. The question was whether the offences under Section 4 (1) (f) of the Bengal Act was cognizable. This question turned on an interpretation of the expression "police officer" in the definition of 'cognizable offence', and was answered in the affirmative, thus:

Now, under the Gaming Act, it is not every police officer who can arrest without a warrant. It is only the District Superintendent of Police who can arrest or by warrant direct the arrest of persons gambling in a house. The District Superintendent being a police officer who may, under a law for the time being in force, viz., the Gaming Act, arrest without warrant. We think that the requirements of clause (1) (f) of the above sections are satisfied, and that the offence in question is, therefore, a 'cognizable offence'. We cannot accept the contention that the words in that clause, 'a police officer' mean 'any and every' police officer. It is sufficient if the legislature has limited the power of arrest to any particular class of police officers."

23. The analogy that can be derived from the aforesaid expression of the Hon'ble Supreme Court in **Lalsingh Kishansingh** (3 supra) is, in the presence of expression 'any police officer not below the rank of Sub-Inspector' occurring in Section 5 of the Act, it is difficult to construe that Revenue Inspector can be authorized to do acts as mentioned in sub-clauses (i) to (iv) of Section 5 (1) of the Act which power is only conferred on any police officer not below the rank of Sub-Inspector of Police.

24. Hence, it is difficult to hold that the Trainee District Collector was empowered to issue warrant authorizing the Revenue Inspector to surprise the club in this case. The present view is not that the District Collector is incompetent to issue warrant, but he has no

power to give authority to Revenue Inspector, except authorizing any police officer not below the rank of Sub-Inspector. It would have been different had the Trainee District Collector authorized either the Sub-Inspector or any police officer not below the Sub-Inspector's rank which would have been in consonance with the mandatory requirement of Section 5 of the Act.

25. In that view of the matter, it has to be held that the entire proceedings conducted by the Revenue Inspector stands vitiated as he cannot be equated with that of the police officer not below the rank of Sub-Inspector to carry out the functions mentioned in clauses (i) to (iv) of Section 5 (1) of the Act. These petitioners succeed in the present criminal petition on this ground alone.

26. Therefore, the proceedings in S.T.C. No.168 of 2017 on the file of Judicial Magistrate of Second Class, Mahabubnagar are liable to be quashed, and, accordingly quashed. Accordingly, the criminal petition is allowed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 30.06.2017
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