

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2018

DELIVERED ON: 09.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.27741 of 2012

and

Crl.M.P.Nos.1, 2 of 2012

1. S.Ramamurthy
2. Gunganathan
3. Nagaraj
4. Muthuchamy
5. Kathirvel
6. Chandrasekar
7. Thirumurthy
8. Jagir Hussain
9. K.Mani
10. Ravikumar
11. Sampath
12. Mohan

.... Petitioners

Vs.

State rep. by
The Inspector of Police,
Mettupalayam Police Station,
Mettupalayam, Coimbatore District.
(Crime No.720 of 2012)

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records and quash the proceedings in S.T.C.No.2912 of 2012 on the file of the Judicial Magistrate, Mettupalayam.

For Petitioners : Mr.G.Saravanan
for Mr.K.Srinivasan

For Respondent: Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.Side)

Mr.Hari Hara Arun Soma Sankar
Government Advocate (Crl.Side)

ORDER

The petitioners are accused No.2 to 13 in S.T.C.No.2912 of 2012, on the file of the Judicial Magistrate, Mettupalayam.

2. The Inspector of Police, Mettupalayam Police Station, on an information, went over to EMS Mayura Lodge, belonging to the first accused on 27.09.2012 at about 7.30 p.m along with a Sub Inspector, Head Constables, and Grand-I constables, attached to the Mettupalayam Police Station, after sending an intimation to the Judicial Magistrate, Mettupalayam, with regard to a search to be made in CMS Mayura Lodge. The police, on search, found the accused No.2 to 13 (petitioners herein) playing cards in Room No.206, EMS Mayura Lodge, Karamadai Road, Mettupalayam at about 8.30 p.m. They also seized a sum of Rs.4,96,170/- and playing cards under the cover of a mahazar. Thereafter, the Inspector of Police registered the first information report in Crime No.720 of 2012 of Mettupalayam Police station for the alleged offences punishable under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930 and also filed a final report dated 27.09.2012 in S.T.C.No.2912 of 2012 before the Judicial Magistrate, Mettupalayam.

3. According to the petitioners (Accused No.2 to 13), they have been falsely implicated in this case. They have therefore, come before this court seeking to quash the entire proceedings pending before the Judicial Magistrate, Mettupalayam in C.C.No.2912 of 2012.

4. Mr.G.Saravanan, learned counsel appearing for the petitioners would contend that "common gaming house" as per Section 3 of the Tamil Nadu Gaming Act, 1930 means any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other 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 and that since the EMS Mayura Lodge is not shown to be a common gaming house, within the meaning of Section 3 of the Tamil Nadu Gaming Act, 1930, the accused No.2 to 13 cannot be punished for an offence punishable under Section 9 of the Tamil Nadu Gaming Act, 1930. He also relied on the following decisions in

1. Periaswami Thevan and others Vs.Prisoners (Accused 1 & 2) in Crl.Appeal No.293 of 1934 dated 18.09.1934.

2. Victor Raj Vs. Poovalingam and others reported in 1986 Law Weekly(Criminal) 201.

3. Santhanam Iyengar Vs. State reported in 1959 MWN (Criminal) 43. and contended that under the definition of a "common gaming house", element of profit or gain is an essential ingredient and that when it has not been stated by the prosecution that the first accused earned profit out of the gaming allegedly played by the accused 2 to 13, they cannot be prosecuted under Section 9 of the Tamil Nadu Gaming Act, 1930. He also pointed out that since the search and seizure were not made as per the procedure laid down under Section 5 of Gaming Act, 1930, no presumption under Section 6 of the Act can be raised.

5. Per contra, the learned Government Advocate (Crl.Side) would contend that for proving that a particular house, room or place was a "common gaming house", it would be sufficient, if it was shown that the house was one in which, instruments of gaming were kept or were used for the profit or gain of the person keeping or using such place, and where the person keeping or using the house, knew that profit or gain would in all probability would result from the use of the instruments of gaming, is a "common gaming house" within the definition of Section 3 of Tamil Nadu Gaming Act, 1930. He would further contend that whether the first accused earned profit or gain is a disputed question of fact, which cannot be decided in the instant petition under Section 482 of the Code of Criminal Procedure. Reliance was placed on the decision in Jagat Singh Kishor Singh Darbar Vs. The State of Gujarat reported in 1979 AIR 857 (S.C.).

6. It is relevant to extract Section 3 of the Tamil Nadu Gaming Act, 1930.

"Common gaming- house" means any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other 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 instruments of gaming or of the house, room, tent, enclosure, vehicle, vessel or place or otherwise howsoever and includes any house, room tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming.

In Emperor Vs. Dattatraya (1923) 25 Bombay (1) AIR 1922 All. 61 it has been held thus

" to constitute a common gaming house it was sufficient if it was one in which instruments of gaming were kept or used for the profit or gain of

the person keeping or using such place, i.e., where the person keeping or using the house knew that profit or gain would in all probability result from the use of the instruments of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and expected result of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient to bring the case within the scope of the definition. It is argued by Mr. Pochaji on behalf of the accused that even in that case it was observed that the prosecution must establish that the purpose was profit or gain and that might be done either by showing that the owner was charging for the use of the instruments of gaming or for the use of the room was charging for the use of the instruments of gaming or for the use of the room or place or in any other manner". The words "or in any other manner", (which were used there instead of the words appearing at the end of the definition "or otherwise howsoever") cannot be regarded as restricting the profit or gain of the owner or occupier of the house to profit or gain in a manner ejusdem generis with what precedes those words, and hence even the hope of making a profit out of the gambling itself is sufficient to satisfy the requirement of the definition of common gaming house.

In the same decision, the term "otherwise howsoever" appearing in Section 3 of the Act was interpreted to be a comprehensive and does not suggest any limitation. It was further held that if profit or gain is the probable and expected result of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient to bring the case within the scope of the definition of common gaming house.

7. As far as the present case is concerned, the first accused being the owner of the lodge, cannot feign ignorance about the activity of the accused No.2 to 13. He cannot also contend that he had let out one single room to be occupied by the accused No.2 to 13 i.e. 12 members. Therefore, prima facie it appears that the first accused was in know of the gambling taking place in the room raided by the police and the aspect whether the first accused earned profit or gain is a disputed question of fact, which can be decided only after full fledged trial.

8. Another contention of the learned counsel appearing

for the petitioners/accused 2 to 13 is that an Inspector of Police cannot enter into a common gaming house, without any warrant issued by the Deputy Superintendent of Police or a Judicial Magistrate, as per Section 5 of the Tamil Nadu Gaming Act, 1930 and that since in the instant case the Inspector of Police, Mettupalayam has raided the lodge without any warrant, proceedings in S.T.C.No.2912 of 2012 have to be quashed for procedural lapse. At this juncture, it is relevant to extract Section 165 of the Code of Criminal Procedure, which reads thus

165. Search by police officer.

(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or

occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

In the instant case, the Inspector of Police conducted a raid in a lodge and before entering, he has sent an intimation to the Jurisdictional Magistrate. Therefore, I do not find any procedural lapse on the part of the Inspector of Police. Further more, it is not disputed that the instruments of gaming were seized from the premises, which shall be in evidence until the contrary is proved that room, house or place is used as a common gaming house and the persons found therein were present for the purpose of gaming. In view of all these reasons stated by me, I hold that there are no good grounds to quash the proceedings in S.T.C.No.2912 of 2012 on the file of the Judicial Magistrate, Mettupalayam and hence, the criminal original petition is liable to be dismissed.

9. In the result, this Criminal Original Petition is dismissed. Since the case is pending from the year 2012, the Judicial Magistrate, Mettupalayam is directed to dispose of the case in S.T.C.NO.2912 of 2012, within a period of three months from the date of receipt of a copy of this order.

10. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected criminal miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

mst

To

1. The Judicial Magistrate,
Mettupalayam.
2. The Inspector of Police,
Mettupalayam Police Station,
Mettupalayam, Coimbatore District.

3. The Public Prosecutor,
Madras High Court.

+1 CC to Mr.K. Srinivasan, Advocate sr 44634.

Cr.O.P.No.27741 of 2012

SS (CO)
SP (20/07/2018)



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