



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 22.10.2018

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) No.11917 of 2015

and

M.P. (MD) Nos.1 & 2 of 2015

M.James Arockia Samy

... Petitioner/Accused No.8

Vs.

The Inspector of Police
Aaravayal Police Station
Devakottai Taluk
Sivagangai District

...1st Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the charge sheet in S.T.C.No.323 of 2015 on the file of the Judicial Magistrate Court, Devakottai, Sivagangai District and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Mr.H.Mohammed Imran
For M/s.Ajmal Associates

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the criminal proceedings in S.T.C.No.323 of 2015 on the file of the Judicial Magistrate, Devakottai, Sivagangai District and having taken cognizance for the offences under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930.

2.The case of the prosecution is that on 16.02.2015 at about 4.30 p.m the respondent inspected the premises at Door No.1, Unjanai Pudhuvayal, Devakottai Taluk, Sivagangai District and found that the petitioner and others were playing Mangatha (Ulle and Velliye) with 52 cards in a round table containing 9 plastic chairs. They also seized a sum of Rs.15,750/- and 9 cell phones from the accused persons, in which the petitioner is arraigned as Accused No.8.



3.The learned counsel for the petitioner would submit that the learned Judicial Magistrate ought not to have taken cognizance for the offences under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930, since the place of offence is not a common house. He would further submit that the place of occurrence belongs to the first accused and the petitioner and others were playing the rummy by playing cards. Due to previous enmity, the respondent registered a case and charged for the alleged offences under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930. The learned counsel would further submit that to bring the offence Section 9 of the Tamil Nadu Gaming Act, 1930, it is imperative for the prosecution to show that the owner of the house was allowing his house or room for being used as a common gaming house with a view to profit or gain for himself. Thus, the basic ingredients to make out a case for trial under the Act are completely missing. There is absolutely no allegation to the effect that the owner of the offence was charging commission or making profit/gain in order to render the house to be a common gaming house. In the absence of such an averment, the charge sheet deserves to be quashed as against the petitioner. Therefore, he prays to quash the criminal proceedings in S.T.C.323 of 2015 on the file of the learned Judicial Magistrate, Devakottai, Sivangangai District.

4.The learned Government Advocate(Crl.Side) would submit that there are 9 persons were playing the cards in the profit motive and hence, the ingredients of Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930 are laid down in the present case and hence, he sought for dismissal of the quash petition.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

6.On perusal of the charge sheet, the petitioner and others are charged under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930. The alleged occurrence took place on 16.02.2015 at about 4.30 p.m at Door No.1, Unjanai Pudhuvayal, Devakottai, Sivagangai District. It is vehemently contended by the learned counsel for the petitioner that it is not a common house to attract the offences under Sections 8 and 9 of the Tamila Nadu Gaming Act, 1930. At this juncture, it is appropriate to refer to the Tamil Nadu Gaming Act, 1930, wherein, Clause III, defines as follows :

"3.Definitions:

In this Act, Unless there is anything repugnant in the subject or context-

"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' gaming does not includes a lottery but includes wagering or betting, except wagering or betting on a horse race then such wagering or betting takes place:

- (i) on the date of which such race is to run; and
- (ii) In a place or places within the race enclosure which the authority controlling such race has with the sanction of the (State) Government set apart for the purpose"

7. In the case on hand, the place where the alleged occurrence is taken place, is not a common gaming house as defined under Section 3 of the Tamil Nadu Gaming Act, 1930. It is also relevant to consider Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930, which reads as follows :

"8. Penalty for opening etc., a common gaming-house: whoever opens, keeps or uses or permits to be used any common gaming house or conducts or assists in conducting the business of any common gaming house or advances or furnishes money for gaming therein, shall be liable on conviction to fine not exceeding five hundred rupees, or to imprisonment not exceeding three months, or to both

9. Penalty for being found gaming in a common gaming house: whoever is found gaming or present for the purpose of gaming in a common gaming house shall, on conviction, be liable to fine not exceeding two hundred rupees or to imprisonment not exceeding one month; and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming".

8. In this regard, the learned counsel for the petitioner has relied upon the Judgment reported in 1990(2) MWN Crime 195 in Raman Nair & 13 others & Durai Maharajan V. State, Wherein, this Court has held as follows:

<https://hcservices.ecourts.gov.in/hcservices/> To decide a question whether a Club, where gaming in cards is carried on, is a gaming house or not, the relevant consideration is not whether any



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member of the club makes a profit but whether the club, as a person, occupying or using or keeping the house or room makes a profit. The fact that the police recovered huge sum of money on the table on the date in question is not sufficient to throw any light as to the club or the secretary of the club deriving anything from out of the money available on the table at the relevant time, may be going to the pockets of the members playing the game of cards. As already indicated, that is not sufficient to consider the premises of the club a gaming house under Section 3 of the Act. Once the premises is not proved to be a gaming house, it goes without saying that the petitioners cannot be stated to have committed the offences under Sections 8 and 9 of the Act."

10. It has been repeatedly held that running of a common gaming house is a primordial requisite before a person could be convicted for an offence under Sections 8 and 9 of the Act and gaming is not an offence per se. Even assuming that the allegations purforth by the prosecution is true, it cannot be constituted an offence as alleged by the prosecution. In these circumstances, even if the prosecution is allowed to continue, in view of the facts and circumstance of the case, it would be a futile exercise and there is no scope for conviction. Therefore, the materials collected in support of the charges do no disclose the commission of any of the offence or make out a case against the petitioners/accused and as such, the entire criminal proceedings cannot be sustained.

11. Further, in this case, there is absolutely no mentioned in the report about anybody running a common gaming house. There is no mention about the first petitioner permitting the use of the premises for gaming activities with a view to derive profit or gain for himself. Therefore, the place in which the petitioners played in 'vetty cheetu' and recovered huge sum by the respondents is not a common gaming house. Time and again, this Court has pointed out that gaming is not an offence per se but it is punishable only when it is carried on in a public place for commercialisation purpose and in a common gaming house with profit motive as contemplated under the Gaming Act. However, the law enforcing agencies ignoring the marked differences between play of games in a house or club and gaming activities carried in a common gaming house indulge in endless prosecution merely harass the



innocent. Though the new VIP Club obtained orders to carry on lawful activities in the recreation club and petition to Superintendent of Police to direct the Inspector not to prohibit the running of club, the respondent has thought fit to raid the Club. It is nothing but malicious prosecution and it has to be curtailed"

9. In view of the above facts and circumstances of the case, this Court is of the considered opinion that the premises, which was subjected to search and seizure under Section 5 of the Gaming Act, could not be termed as a common gaming house, and therefore, continuance of proceedings, as against the petitioner, would be a clear abuse of process of law and the abuse of process of Court. Every case of playing cards, particularly during festive season, in private property not for the gain and profit of the occupier or owner of the property cannot be termed as gambling in a common gaming house, under the Act, to constitute an offence.

10. In view of the above facts and circumstances of the case, that it is a case of playing cards during the private function. The incident is neither in a public place nor in a common gaming house and the facts and circumstances do not spell out the commission of any offence under the Act.

11. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in S.T.C.No.323 of 2015 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Judicial Magistrate
Devakottai
Sivagangai District

2. The Inspector of Police
Aaravayal Police Station
Devakottai Taluk
Sivagangai District



3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1cc to M/s.Ajmal Associates, Advocate, Sr.No.91096.

Cr1.O.P. (MD) No.11917 of 2015
and
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