

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6220 OF 2018

ORDER:

This criminal petition is filed by petitioner/accused No.3 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings against him in C.C.No.92 of 2018 pending on the file of V Additional Judicial Magistrate of First Class, Nellore, registered for the offences punishable under Sections 3 and 4 of A.P.Gaming Act (for short "the Act") and under Sections 109 and 213 of Indian Penal Code (for short "I.P.C.").

The respondent i.e. Inspector of Police, IV Town Police Station, Nellore filed charge sheet alleging that on 07.08.2017 at about 19.30 hours he received information that the accused is abetting cricket betting and helping cricket betting players from legal arrests and avoid them from the punishments by accepting gratification from the cricket betting player. Immediately, L.W.9 – Inspector of police secured the presence of L.W.1 – Paluru Pradeep, L.W.2 – Rapuru Surendra along with his staff L.W.6 – P.Janardhan, L.W.7 – Y.Subramanyam and L.W.8 – Sk.Abdul Rasheed proceeded to Ramesh Reddy Nagar near Madhavaiah and Sons furniture shop, Nellore and arrested the accused at 22.00 hours, recorded his confessional statement in the presence of L.W.1 - Paluru Pradeep and L.W.2 – Rapuru Surendra and seized betting amount of Rs.2,00,000/- and 8 ½ sovereigns of gold chain, which is a valuable security given by the cricket betting players as gratification and conceal them from legal arrest. He drafted the confessional Mahazarnama in the presence of mediators and on the strength of the same, police registered a crime and issued

F.I.R. Thereafter, investigating agency examined L.Ws.3 to 5 and recorded their statements under Section 161 (3) of Cr.P.C. and based on the evidence collected during investigation, concluded that there is prima facie material to proceed against the petitioner and filed charge sheet against the petitioner for the offence punishable under Sections 3 and 4 of the Act and under Section 109 and 213 of I.P.C.

The petitioner filed the present petition to quash the proceedings contending that the petitioner is a graduate, hailed from agricultural family and doing construction works at Hyderabad and Nellore City. He is a strong supporter of Y.S.R. Congress party, which is the main opposition party in the state of Andhra Pradesh to the ruling party and in order to wipe out the opposition party in the State of Andhra Pradesh, the ruling party leaders have been resorting to the acts of inducement, coercion and harassment of the party activists of YSR Congress party and in the process succeeded in making about 25 Legislators of YSR congress party defecting to ruling party apart from large number of second grade cadre joining the ruling party.

The petitioner being a spokesperson of Y.S.R. Congress Party participating in the activities of Y.S.R. congress party, but with a view to denounce his prestige within the cadre of Y.S.R. Congress party and public, the present crime was registered against the petitioner for the offences referred above.

The main ground urged in the petition is that the petitioner did commit no offence much less offence punishable under Sections 3 and 4 of the Act and under Sections 109 and 213 of I.P.C. and that no fair and transparent investigation was taken up

by the investigating agency, which is contrary to Articles 20 and 21 of the Constitution of India.

L.Ws.3 to 5 filed notarized affidavits before the Magistrate that they were never acted as mediators and the copies of affidavits are placed on record. Therefore, the investigating agency created the entire material to rope the petitioner with the offence punishable under Sections 3 and 4 of the Act and under Section 109 and 213 of I.P.C.

It is also contended that the allegation made against the petitioner that he extended help to Sri D.Krishna Singh, would not amount to an offence punishable under Section 213 of I.P.C., thereby the allegations made in the charge sheet including the statements recorded by the police under Section 161 (3) of Cr.P.C. do not constitute any offence punishable under Sections 3 and 4 of the Act and under Section 109 and 213 of I.P.C., prayed to quash the proceedings.

Sri H.Prahalad Reddy, learned Counsel for the petitioner contended that the alleged prime accused D.Krishna Singh was not arrayed as accused, but the petitioner, who allegedly abetted D.Krishna Singh, alone arrayed as accused and in the absence of arraying the alleged prime accused – D.Krishna Singh, the petitioner cannot be prosecuted for the offence punishable under Section 109 of I.P.C. Similarly, extending assistance to the said D.Krishna Singh in prosecuting criminal proceedings and criminal cases would not constitute any offence punishable under Section 213 of I.P.C. Therefore, none of the allegations made in the charge sheet including the statements recorded under Section 161 (3) of

Cr.P.C. do not establish *prima facie* that the petitioner committed offence punishable under Sections 109 and 213 of I.P.C.

Even according to the allegations made in the seizure – cum – confessional Mahazarnama, allegedly recorded in the presence of L.Ws.3 to 5, the petitioner did not commit any offence punishable under Sections 3 and 4 of A.P.Gaming Act since the petitioner was found on the road while he was proceeding. Therefore, the question of running gaming house does not arise. The final report is a concocted story in view of the affidavits filed by L.Ws.3 to 5 and based on such concocted story; the proceedings cannot be continued and requested this Court to quash the proceedings.

Learned Public Prosecutor for the State of Andhra Pradesh strongly relied on confessional statement recorded by the police, which is styled as “confessional Mahazarnama” on 07.08.2017, wherein the petitioner allegedly confessed about his assistance to D.Krishna Singh and that the petitioner with his political influence aiding the said D.Krishna Singh to run common gaming house and he is also looking after the legal affairs of the D.Krishna Singh to obtain bail in connection with two cases, already registered against the said D.Krishna Singh and spent some amount out of Rs.3,00,000/- entrusted to him by D.Krishna Singh to meet the legal expenses. Therefore, the said confessional statement is sufficient to conclude that the petitioner committed offence punishable under Sections 3 and 4 of the Act and under Section 109 and 213 of I.P.C. and prayed to dismiss the petition.

Considering rival contentions and perusing the material on record, the point that arises for consideration is:

Whether the allegations made in the charge sheet including the statements recorded by the police under Section 161 (3) of Cr.P.C. constitute any offence punishable under Sections 3 and 4 of the Act and under Section 109 and 213 of I.P.C. accepting the allegations on their face value, if not, whether the proceedings against the petitioner in C.C.No.92 of 2018 pending on the file of V Additional Judicial Magistrate of First Class, Nellore, are liable to be quashed?

P O I N T:

Before deciding the rival contentions raised by the learned counsel for the petitioner and Public Prosecutor before this Court, I would like to discuss about the scope of Section 482 of Cr.P.C.

Section 482 of Cr.P.C. deals with inherent powers of High Court, it reads as follows:

482. Saving of inherent power of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In view of the powers vested with this Court by Section 482 of Cr.P.C., it is apposite to advert to the law laid down by the Apex Court to exercise power to quash F.I.R. or any other proceedings.

In “***R.P. Kapur v. State of Punjab***¹”, the Apex Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

¹ AIR 1960 SC 866

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar²”***

In ***“State of Haryana v. Bhajan Lal³”*** the Apex Court considered in detail the powers of High Court under Section 482

² AIR 1990 SC 494

³ 1992 Supp (1) SCC 335

and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Keeping in mind the law laid down by the Apex Court, I would like to examine the allegations made in the charge sheet including the statements recorded by the police under Section 161 (3) of Cr.P.C. to find out whether those allegations constitute offence punishable under Sections 3 and 4 of the Act and under Section 109 and 213 of I.P.C.

Section 3 of the Andhra Pradesh Gaming Act deals with penalty for opening etc., a common gaming house. The word “common gaming house” is defined under Section 2 (1) of the Act, which runs as follows:

“Section 2 Definitions: In this Act, unless the context otherwise requires—

(1) ‘common gaming house’, means--

(i) in the case of gaming--

(a) on a horse-race except in the manner provided in clause (2); or

(b) on the market price of cotton, bullion or other commodity or on the digits of the number used for stating such price; or

(c) on the ground of variation in the market price of any commodity specified in item (b) or on the digests of the number used for stating the amount of such variation; or

(d) on the market price of stock or share or on the digits of the number used for stating such price; or

(e) on the number of registration or on the digits of the number of registration of any motor vehicle using a public place; or

(f) on any transaction or scheme of wagering or betting in which the receipt or distribution of winnings of Prizes, in money or otherwise, is made to depend on chance, any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which the gaming takes place in which the horses or other instruments of gaming, are kept or used for such gaming;

(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.

Explanation:- For the purposes of sub-clause (ii), any premises or place belonging to or occupied by, a club, society, or other association of persons, whether incorporated or not, which is used or kept for purposes of gaming shall be deemed to be a common gaming house notwithstanding that there is no profit or gain for the club, society or other association of persons on account thereof"

The alleged cricket betting organized by D.Krishan Singh attracts clause (f) of Section 2 (1) of the Act. The house means any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which the gaming takes place in which the horses or other instruments of gaming, are kept or used for such gaming. But here, the petitioner was found walking on the road as shown in the rough sketch of the scene of offence filed along with the charge sheet and perused by the Magistrate for taking cognizance against the petitioner. The rough sketch disclosed that the petitioner was found on the road opposite to Madhavaiah and Sons furniture shop. Therefore, if the petitioner is running "common gaming

house” it would fall within the definition of “common gaming house” under Section 2 (1) (f) of the Act.

But, here it is not the case of the prosecution that the petitioner running “common gaming house”. Even according to the allegations made in the charge sheet and confessional statement recorded by the police dated 07.08.2017, which is the basis for setting the criminal law into motion, the petitioner was aiding D.Krishna Singh to run “common gaming house” for cricket betting with his political influence being Y.S.R. congress party spokesperson of Nellore. But as per Section 3 of the Act, any person who 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 punishable with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees etc.

Explanation thereto clarified that the expression “person” includes the owner, or as the case may be, the occupier of the place used as a common gaming house and where such place belongs to or is occupied by a club, society or other association of persons, the person having the care or management of such place.

It appears from the statement made by the petitioner that D.Krishna Singh requested the petitioner, who is having political influence to manage the police to avoid any harassment in the hands of the police and cooperate with him to run “Common gaming house” and he received Rs.3,00,0000/- and two gold chains from D.Krishna Singh to manage the police and to look after the cases already registered against D.Krishna Singh, to

[illegible]

The specific part of confessional statement leading to seizure in the presence of mediators by the investigating officer would show that the petitioner assisting D.Krishna Singh in cricket betting business influencing the police due to his political career being the spokesperson of Y.S.R. congress party. According to Section 3 of the Act any person “**assists in conducting the business of any common gaming house**” or advances or furnishes money for gaming therein is also liable for punishment.

Therefore, in view of confessional statement, though not substantive piece of evidence as it is an inculpatory statement made before the police officer, the statement recorded by the police during investigation under Section 161 (3) of Cr.P.C. strengthens the case of the prosecution that the petitioner is assisting D.Krishna Singh to run “common gaming house” as defined under

Section 2 (1) of the Act. Therefore, the petitioner who is “assisting in conducting common gaming house” is liable for punishment under Section 3 (1) of the Act. Therefore, the material on record, if accepted on its face value, it constitutes offence punishable under Section 3 of the Act.

The Magistrate took cognizance of offence punishable under Section 4 of the Act against the petitioner.

Section 4 deals with penalty for being found gaming in a common gaming house, which reads thus:

“Section 4 - 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 punishable with imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.

Explanation :- For the purpose of this section, any person found in any common gaming house during gaming therein shall be presumed to have been present there for the purpose of gaming.”

But in the present case, the petitioner was found proceeding on the road opposite to Madhavaiah and Sons furniture shop and none found gaming in the common gaming house and it is not the place where common gaming house being run by D.Krishna Singh. Therefore, the material on record did constitute no offence punishable under Section 4 of the Act as the petitioner was found while proceeding on the main road opposite to Madhavaiah and Sons furniture shop and not in any common gaming house. Taking cognizance against the petitioner for the offence punishable under Section 4 of the Act is an illegality and to that extent the proceedings are liable to be quashed.

The Court also took cognizance for the offence punishable under Section 109 of I.P.C. Section 109 of I.P.C. reads as follows:

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment:- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.”

The word ‘abetment’ is defined under Section 107 of I.P.C., which is as follows:

“107. Abetment of a thing:- A person abets the doing of a thing, who-

Firstly:--Instigates any person to do that thing; or

Secondly:--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing”

In view of clause (3) of Section 107 of I.P.C. “intentionally aids, by any act or illegal omission, the doing of that thing”, would constitute offence punishable under Section 109 of I.P.C., but Section 109 of I.P.C. can be invoked where there was no express provision in the I.P.C. or in any penal provision. Here, the petitioner is assisting D.Krishna Singh in conducting common gaming house. Therefore, the alleged abetment would fall within Section 3 of the Andhra Pradesh Gaming Act. Consequently, the question of proceeding against the petitioner for the offence punishable under Section 109 of I.P.C. does not arise and the Magistrate did not apply his/her mind to the facts of the case with reference to the provisions of the Act and committed an error or

illegality in taking cognizance for the offence punishable under Section 109 of I.P.C. independently without impleading D.Krishna Singh, who is running common gaming house as alleged in the charge sheet. Therefore, the order taking cognizance by the Magistrate against the petitioner for the offence punishable under Section 109 of I.P.C. is liable to be quashed.

The Magistrate also took cognizance against the petitioner for the offence punishable under Section 213 of I.P.C., which is as follows:

213. Taking gift, etc., to screen an offender from punishment:- Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself for any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment.

Here, the petitioner allegedly received Rs.3,00,000/- from D.Krishna Singh, who is allegedly running "common gaming house" to appoint an advocate to obtain bail in the cases registered against him. Receipt of amount to pay the fee to the counsel and to meet the expenses in prosecuting the legal proceedings would not amount to taking gift etc., to screen an offender from punishment. Therefore, the allegations in the confessional statement dated 07.08.2017 recorded during the investigation by the Inspector of Police in the presence of mediators and the allegations made in the charge sheet including the statement recorded under Section 161 (3) of Cr.P.C. do not disclose commission of offence punishable under Section 213 of I.P.C.

It is also specifically contended by the learned counsel for the petitioner that the alleged mediators, in whose presence the confessional statement was recorded, also filed their affidavits before the Magistrate; despite those affidavits, the Magistrate took cognizance against the petitioner. But filing affidavits before the Court would not serve any purpose since this Court cannot appreciate the material but evaluate the material available on record while exercising power under Section 482 of Cr.P.C. in view of the judgment of the Apex Court rendered in “**Umesh Kumar v. State of Andhra Pradesh**”⁴. In the said judgment the Apex Court is of the view that at the stage of exercising power under Section 482 of Cr.P.C. the High Court could examine the charge sheet, case diary and other material in the charge sheet which by no means can be termed as substantive evidence. However, in exercise of power under Section 482 of Cr.P.C., it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition Under Section 482 Code of Criminal Procedure for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the

⁴ (2013) 10 SCC 591

application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

In “***State of Orissa v. Saroj Kumar Sahoo***⁵”, wherein the Apex Court held that while exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

Therefore, the affidavits of the mediators cannot be taken into consideration at this stage, which is the defence set up by the petitioner in the main case. Hence, filing affidavits by the mediators before the Court would not serve any purpose.

The Supreme Court held that “Summoning of an accused in criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable

⁵ (2005) 13 SCC 540

thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.” (Vide “**Pepsi Foods Limited v. Special Judicial Magistrate**⁶”)

In view of the law declared by the Apex Court in the judgment referred supra, it is clear that the Magistrate without applying his/her mind took cognizance for the offence punishable under Section 4 of the Andhra Pradesh Gaming Act and Sections 109 and 213 of I.P.C. Therefore, the order of the Magistrate taking cognizance against the petitioner for the offence punishable under Section 4 of the Andhra Pradesh Gaming Act and under Sections 109 and 213 of I.P.C. is liable to be quashed, but the petitioner is liable to be prosecuted for the offence punishable under Section 3 of the Andhra Pradesh Gaming Act.

In the result, the criminal petition is allowed in part. The proceedings against the petitioner/accused in C.C.No.92 of 2018 pending on the file of V Additional Judicial Magistrate of First Class, Nellore, registered for the offences punishable under

⁶ 1998 (5) SCC 749

Section 4 of the Andhra Pradesh Gaming Act and under Sections 109 and 213 of I.P.C are hereby quashed while permitting the Magistrate concerned to proceed further against the petitioner for the offence punishable under Section 3 of the Andhra Pradesh Gaming Act. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

16.07.2018
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