

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11241 of 2018

ORDER:

The petitioners herein are A1 to A22 in C.C.No.258 of 2018 pending on the file of the learned Judicial First Class Magistrate, Palakol, West Godavari District, Andhra Pradesh, registered for the offences punishable under Sections 3 & 4 of the A.P. Gaming Act.

2. The person who conducted the raid is by name B.Krishna Kumar, Inspector of Police, Palakol town pursuant to the search warrant order No.634/SDPO/GEN/2018 dated 05.08.2018 of SDPO, Narsapur to conduct the said search in the premises bearing D.No.41-2-30 building belongs to the Town Hall. It is stated that eight persons were playing Kotha banti with cards with money and coins and taken to custody in the presence of the mediators referred supra and having detected the crime as alleged offence supra he himself conducted the investigation and filed charge sheet. The charge sheet of 08.08.2018 in the Memo of evidence cited as LWs 1 to 7 clearly speaks LWs 1 to 4 are the police constables of Palakol town Police Station, who assisted him pursuant to said warrant of the SDPO in conducting raid and search. LWs 5 and 6 are the mediators to the search and seizure of material and apprehension of the accused, and he himself cited as LW7 in conducting the raid, arrest of the accused, seizure of the material, drafting of the mediatorsnama, registration of the crime and

the investigation by recording the statements and filing of charge sheet.

3. As observed by the common order of this Court dated 14.11.2018 in Crl.P.Nos.6901, 6918 & 6928 of 2018 referring to several expressions, particularly the latest three Judge Bench expression of the Apex Court in **Mohan Lal v. State of Punjab**¹ referring to earlier expressions in **Bhagwan Singh v. State of Rajasthan**² and **Megha Singh v. State of Haryana**³ and **State by Inspector of Police, Narcotics Intelligence Bureau, Madurai, Tamilnadu v. Rajangam**⁴ and **Noor Aga v. State of Punjab**⁵ particularly the observations of paragraph Nos.14 & 15 of **Mohan Lal**'s case (supra 1), it was held that a fair investigation, which is very foundation for fair trial, necessary postulates that the informant and the investigator must not be the same person, any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof. Having regard to the above, there also the crimes registered for the offences punishable under Sections 3 & 4 of the A.P. Gaming Act registered by the Alipiri Police Station, Tirupati, in the respective crimes from the investigation filed the final report by the self-same respective persons observed as follows:

¹ 2018 SCC Online SC 974

² 1975 SCC (Crl) 737

³ AIR 1995 SC 2339

⁴ 2010 (15) SCC 369

⁵ (2008) 16 SCC 417

“7. Having regard to the above, the cognizance orders in STC. Nos.474 of 2015, 325 & 326 of 2017 are set aside by reverted the clock back to the crime registration stage in directing the Superintendent of Police concerned to handover the investigation to another police officer other than the person who conducted the raid and detected the crime and registered the FIR if any even.”

4. Having regard to the above, from the similar facts by following the expressions of the Apex Court and the conclusion arrived for similar case supra, this Criminal Petition is allowed to the extent of the cognizance order of the learned Magistrate from the police final report allotting C.C.No.258 of 2018 for the offences punishable under Sections 3 & 4 of the A.P. Gaming Act setting aside by reverting the clock back to the crime registration stage in directing the Superintendent of Police, West Godavari, to handover the investigation to another police officer other than said B.Krishna Kumar, Inspector who conducted the raid and detected the crime and registered the F.I.R.

5. Accordingly, to the above extent this Criminal Petition is allowed. Needles to say any material the petitioners claim to prove their innocence is left open to submit before the Investigating Officer to consider as part of investigation if relevant. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

14.11.2018
MVA