

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5877 of 2019

S.Silambarasan

... Petitioner

Vs

State Rep. by its
Sub-Inspector of Police,
Thirumanur Police Station,
Ariyalur District.
(Crime No.219 of 2016)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the F.I.R in Crime No.219 of 2016 on the file of the respondent police and quash the same as against the petitioner / 2nd accused.

For Petitioner : Mr.M.R.Kuyilan

For Respondent : Mr.C.Raghavan
Government Advocate (Crl. Side)

ORDER

This quash petition is filed to quash the Criminal proceedings in Crime No.219 of 2016 on the file of the Judicial Magistrate No.II, Ariyalur, thereby had taken cognizance for the offence under Section 12 of Tamil Nadu Gaming Act, 1930 as against the petitioner/2nd accused.

2.The charges as against the petitioners are that on 27.11.2016, the respondent/Sub inspector of Police during his day rounds in and around the Melakavattankurichi Village the petitioner and other two accused playing cards for money, while they saw the respondent police they started running away and the respondent police chased them and on enquiry the petitioner and other accused admitted that they are playing cards. Since, no public was found the respondent himself lodged the complaint and seized the cards of 52 in Nos and Rs.30/- from the petitioner and other accused in the place of occurrence. Based on the complaint given by the Sub Inspector of Police, the present FIR has been registered under Section 12 of Tamil Nadu Gaming Act,

1930. The said criminal proceedings is under challenge in this quash petition.

3.The learned counsel appearing for the petitioner would raise the following grounds to quash the Criminal proceedings:

(i) The respondent police ought not to have taken cognizance of the offence under Section 12 of Tamil Nadu Gaming Act, 1930, since the Act itself repealed and it is no more existence and hence, the Gaming Act is not applicable for the offences alleged to have been committed by the petitioner.

(ii) The respondent police himself is a complainant and an Investigating Officer and the said act is not permissible under the Code of Criminal Procedure and also it is in violation of Article 21 of Constitution of India.

(iii)The alleged place of occurrence is an agricultural field, therefore the necessary ingredients viz., running of common gaming house, which is primordial requisite for the offence are absent. Therefore, the offence is not at all made out as against the petitioner.

Thus, the learned counsel appearing for the petitioner would pray for the quashment of the criminal proceedings as against the petitioners.

4.Per contra, the Government Advocate (Crl. Side) would submit that the petitioner was found in agricultural field and he committed offence under Sections 12 of Tamil Nadu Gaming Act, 1930. Further, he would contend that there are prima facie materials to establish that the petitioners has committed the offences as alleged by the prosecution. Thus, he prayed for dismissal of the quash petition.

5.Heard Mr.M.R.Kuyilan, learned counsel appearing for the petitioner and Mr. Mr.C.Raghavan, learned Government Advocate (Crl. Side) appearing for the respondent and perused the documents available on record.

6.Now, the question arises that whether playing cards is an offence or not?

7.As repeatedly held by the Hon'ble Apex Court of India and this Court, the game of playing cards is not an offence peruse. It is an offence only when it is carried on in a public place or in a common gaming house as defined in the Public Gaming Act. The common gaming house is defined as follows:

"Common gaming-house. Common gaming- house, means any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables 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 or place or otherwise however, 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”

Admittedly the petitioner and other accused were playing the cards in an agricultural land, as such it cannot constitute an offence as alleged by the prosecution. Therefore, the materials collected in support of the charges do not disclose the commission of any of the offence or made out a case against the petitioner/accused and as such, the entire criminal proceedings cannot be sustained.

8. The another point for consideration is that whether the defacto complainant can lodge the complainant and also investigate the case or not?

9. Before parting with this judgement, we need to remind the prosecuting authorities that the error that has occurred in the present case ought never to be repeated and the Director General of Police still bring it to the notice of all Investigating Officers in the state that there is a legal bar to an Investigating Officer functioning in the dual capacity of the complainant also and that this error should not be repeated because it would virtually vitiate even an otherwise reasonably good investigation.

10. The Apex Court followed the ratio in Megha Singh V. State of Haryana reported in 1996 (II) SCC 709 and in the judgement reported in (2005) 5 SCC 258 in the case of Mukhtiar Ahmed Ansari V. State had acquitted the accused. However, the view of the Apex Court has been distinguished by the Apex Court in many cases including the case reported in (2015) 3 SCC 220 (Vinod Kumar V. State of Punjab) following the judgement reported in (2004) 5 SCC 230 (Jeevanantham V. State) holding that unless the defacto complainant, who also happens to be the Investigation Officer, is personally biased and prejudiced and personally interested to get conviction to the accused, the contention cannot be sustained. Considering the said decisions along with the facts of the present case, in the present case, the respondent is the complainant as well as the Investigation Officer.

11. In view of the above discussion, this Court is of the view that the continuous of the prosecution as against the petitioner will be a futile exercise and it will be a waste of

time and energy. As such, this criminal original petition deserves to be allowed by quashing the said FIR.

12.In the result, this criminal original petition is allowed, and the F.I.R in Crime No.219 of 2016 on the file of the respondent police is hereby quashed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate II,
Ariyalur.

2.The Sub-Inspector of Police,
Thirumanur Police Station,
Ariyalur District.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.R.Kuilan, Advocate Sr.20407

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