

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.11915 of 2017
and CrI.M.P.Nos.7814 & 7815 of 2017

1.A.Mahamood
2.S.Kesavan
3.K.Raji
4.Gopinath
5.Venkatesan
6.C.Subramanian
7.Manokaran
8.Nedumaran
9.Selvaraj

... Petitioners/Accused

Vs.

State by,
Inspector of Police,
Sevvapet Police Station,
Sevvapet,
Salem District

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records concerned in S.T.R.No.786 of 2011 on the file of the Judicial Magistrate - III, Salem, Salem District and quash the same insofar relates to petitioners are concerned.

For Petitioners : Mr.C.Prakasam

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

The petition has been filed to quash the proceedings in S.T.R.No.786 of 2011 on the file of the Judicial Magistrate - III, Salem, Salem District

2. Mr.C.Prakasam, the learned counsel for the petitioners would submit that the first petitioner is running a Registered Recreation Club in the name and style of Friends Recreation Club, Salem. Though the first petitioner obtained orders from

this Court not to interfere with the day to day affairs of the club against the respondent, the respondent started interference with the club owned by the first petitioner since the first petitioner refused to pay mamool to the local political authorities. Therefore, he prayed this Court in W.P.No.13263 of 2011 and this Court specifically directed the respondent not to interfere except on specific complaint alleging illegal conduct with the lawful day to day activities of the club. While being so, the respondent filed charge sheet in S.T.R.No.786 of 2011 alleging that the petitioners played rummy with money within the premises of the said Friends Recreation Club and it is punishable under Section 8 and 9 of Tamil Nadu Gambling Act. He further submitted that the premises is not a gaming house and as per Section 5 of Tamil Nadu Gaming Act, the power to grant warrant to enter a common gaming house vested with the police officer not below the rank of the Deputy Superintendent of Police whereas the respondent entered into the gaming house and arrested the petitioners who were playing cards. Therefore, the entire proceedings is vitiated and prayed for quashment of the entire proceedings in S.T.R.No.786 of 2011 on the file of the Judicial Magistrate - III, Salem, Salem District.

3. Mr.M.Mohamed Riyaz, Additional Public Prosecutor would submit that the respondent Police filed charge sheet in S.T.R.No.786 of 2011 alleging that the petitioners played rummy with money within the premises of Friends Recreation Club and it is punishable under Section 8 and 9 of Tamil Nadu Gambling Act. He further submitted that the respondent Police entered into the gaming house and arrested the petitioners when they were playing cards. Therefore, he prayed for dismissal of this petition.

4. Heard, Mr.C.Prakasam, the learned counsel for the petitioners and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the respondent.

5. It is seen that the petitioners have been charged for the offences under Sections 8 and 9 of Tamil Nadu Gaming Act for the allegation that they played rummy in the gaming house namely Friends Recreation Club at Salem. Under Section 5 of Tamil Nadu Gaming Act, 1930, the power to grant warrant to enter a common gaming house is vested with a Police officer not below the rank of the Deputy Superintendent of Police who shall issue such warrant if he has reason to believe that no place is used as a common gaming house. In this case, the respondent who is the Inspector of Police had entered into the house of the petitioners and had taken action against the petitioners, and apparently the Inspector of Police was not authorised or accompanied by the Deputy Superintendent of Police who possessed warrant to arrest the petitioners. Therefore, the entire procedure contemplated under Section 5 of Tamil Nadu Gaming Act,

1930 is violated and the entire proceedings initiated by the respondent is vitiated.

6. Further, it is seen from the definition of 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 main of the persons owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept, or used for the purpose of gambling" and Gaming does not include a lottery but includes wagering or betting.

7. In this regard, the Hon'ble Supreme Court of India in the case of State of Andhra Pradesh Vs. K.Sathyanarayana reported in AIR 1986 SC 825, has held as follows:

"The game of rummy is not a game entirely of chance like the three-card" game. The different names such as "flush", 'brag' etc is a game of pure chance, rummy on the other hand, requires certain amount of skill because the fall of the cards has to be memorized and the building up of rummy requires considerable skill-in holding and discarding cards. It is mainly and preponderantly same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone, it cannot be said that rummy is a game of chance and there is no skill involved".

8. Therefore, the game of rummy cannot be said as a game of chance and there is no skill involved. Therefore, the offence under Section 8 and 9 of Tamil Nadu Gaming Act would not attract as against the petitioners. Accordingly, this Criminal Original Petition is allowed and as such the proceedings in S.T.R.No.786 of 2011 on the file of the Judicial Magistrate - III, Salem, Salem District is quashed insofar as the petitioners are concerned. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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1. The Judicial Magistrate - III, Salem,
Salem District

2. Inspector of Police,
Sevvapet Police Station,
Sevvapet,
Salem District

3. The Public Prosecutor,
High Court of Madras.

+2cc to Mr.C.Prakasam, Advocate SR.No.15721

Crl.O.P.No.11915 of 2017
and Crl.M.P.Nos.7814 & 7815 of 2017

SJ(CO)
GMY(27/02/2019)



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