



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P. (MD)No.21025 of 2019

WEB COPY

Jaguvar Recreation Club,
Rep. By its Secretary,
S.Navaneethakrishnan

: Petitioner

Vs.

1.The Superintendent of Police,
Madurai District,
Madurai.

2.The Inspector of Police (Town),
Thirumangalam Police Station,
Thirumangalam,
Madurai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondents and their subordinates from interfering with day-to-day affairs of the petitioner's club namely "Jaguvar Recreation Club" in any way without reasonable cause at the permission at Door No.1-113/115, Vasanthanagar, Kalisalpatti, Thirumangalam, Madurai and consequently, direct the respondents to give permission to conduct the games by considering the petitioner's representation dated 13.08.2019 within the time stipulated by this Court.

For Petitioner
For Respondents

: Mr.P.Janarthanan
: Mr.M.Rajarajan,
Government Advocate

ORDER

The petitioner has filed the present Writ Petition seeking a Writ of Mandamus, to forbear the respondents and their subordinates from interfering with day-to-day affairs of the petitioner's club, namely "Jaguvar Recreation Club" in any way without reasonable cause at the permission at Door No.1-113/115, Vasanthanagar, Kalisalpatti, Thirumangalam, Madurai and consequently, direct the respondents to give permission to conduct the games, by considering the petitioner's representation dated 13.08.2019.

2. Heard both sides.



3. This Court, on an earlier occasion, has considered the similar issue in the case of **R.Sathya v. The Superintendent of Police, Dindigul District** reported in 2009(6) CTC 347 and passed the following order:

"2. The Petitioner is a Recreation Club registered as a Society as per the provisions of the Tamil Nadu Societies Registration Act, 1975. The society is functioning at their premises bearing Door No.1/10, Durga Complex, R.S.Road, (Near Ganesh Theater), Dindigul-3.

3. The Petitioner-Club has been conducting the affairs of the Club in a lawful manner. The Petitioner-Club was mainly engaged in indoor and outdoor games.

4. The grievance of the Petitioner is on account of the inspection of Club premises by the Second Respondent and the Police men for the purpose of verifying as to whether the Petitioner was indulged in unlawful activities. According to the Petitioner, the Respondent Police were harassing them and every now and then, they are visiting the premises and, therefore, it causes undue hardship to them. In such circumstances, the Petitioner has filed the Writ Petition.

5. When the matter came up for hearing on 23.03.2009, I have directed the learned Government Advocate to take instruction from the Respondents as to whether the Petitioner was indulged in any of the unlawful activities warranting action by the Police. However, the learned Government Advocate was not in a position to inform this Court about the involvement of the Petitioner or its members in any of the offence under the Gaming Act or any other provisions of the Penal Statutes.

6. The Tamil Nadu Gaming Act, 1930 makes provision for punishment of gaming and the keeping of common gaming-houses in the State of Tamil Nadu. A common gaming-house is defined as a 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 or vessel. However, gaming does not include a lottery but includes wagering or betting. Section 4 of the Tamil Nadu Gaming Act, 1930 provides the penalty for opening the common gaming-house and Section 4(2) of the Tamil Nadu Gaming Act, 1930 makes the person found in any such house, room, tent, enclosure, vehicle, vessel or place used for the purpose of gaming on any of the objects shall be presumed, until

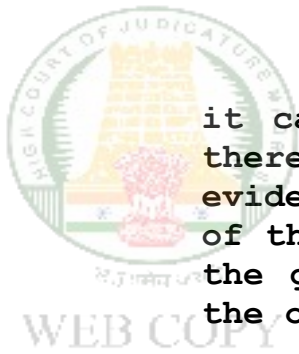


the contrary is proved to have been there for the purpose of gaming on such object.

7. Since the Tamil Nadu Gaming Act, 1930 permits the entry of Police in the premises alleged to be used for the purpose of gaming, a specified procedure was prescribed as per Section 5 of the Act, it is not possible for the Police Officers below the rank of a Deputy Superintendent of Police to enter the premises, unless there was an authorisation by a Judicial Officer not inferior to a Judicial Magistrate or any Police Officer not below the rank of a Deputy Superintendent of Police. It was only on the satisfaction of the Judicial Magistrate or the Police Officer not below the rank of a Deputy Superintendent of Police that a particular place is used as a common gaming-house, a warrant could be issued to a Police Officer not below the rank of a Sub-Inspector to enter the premises with such assistance and to arrest all persons found therein and to seize all instruments of gaming including money. Therefore, an inbuilt mechanism against Police intervention in the matter has been provided in the Act itself. Section 13 makes the offence punishable under the Tamil Nadu Gaming Act, 1930, a cognizable offence and, therefore, it is possible for the Police to arrest the accused without warrant. Similar provisions are contained in the Public Gambling Act, 1867 also.

8. The issue as to whether the game of rummy was only a game of chance or it involves an element of skill was considered by the Supreme Court in State of A.P. v. K. Satyanarayana, MANU/SC/0081/1967 : AIR 1968 SC 825, and it was observed thus:

12.....The game of Rummy is not a game entirely of chance like the 'three-card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under 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 memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the 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 in it. Of course, if there is evidence of gambling in some other way or that the owner of the house or the Club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home....

9. The right of the Petitioner to conduct the Club and the authority of the Respondents-Police to prevent the commission of a cognizable offence had to be balanced. The attempt should be to strike a balance between the right claimed by the Petitioner and the authority of the Respondents-Police to take action in the event of commission of an offence. The Petitioner has to conduct the activities of the Club only as permitted by law and there should be no attempt to allow the members of the Club to conduct gambling.

10. While considering the provisions of the Public Gambling Act, 1867, a Division Bench of this Court in Manakadu Elainger Nala Sports, Narpani Mandram v. State of Tamil Nadu, MANU/TN/0001/2005 : 2005 (1) CTC 245, held that playing of games of skill, like carom and chess does not attract the provisions of the Public Gambling Act, 1867 and observed thus:

"6. This is a free and democratic country. All citizens are free to do whatever they like unless prohibited by law. Hence unless the Respondents show which law has been violated for charging money by the Club from the persons who go to the Club for playing Carrom and Chess, the activity cannot be prohibited. When it is claimed that some act is illegal, the persons making such allegation must show which specific law is being violated. Merely making general allegation that the activity is illegal without specifying which law has been violated, is neither here nor there.

7. It is alleged by the Respondents that the Public Gambling Act, 1867 is being violated. However Section 12 of the said Act says:

"Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played."

8. Carrom and Chess certainly require skill and hence in view of Section 12, the Act itself has no application."

11. It is appropriate to quote the observation of



the Constitutional Bench in *Krishnachandra v. State of Madhya Pradesh*, MANU/SC/0056/1963 : AIR 1965 SC 307, which reads thus:

"10. Considering the fact that gambling is an evil and it is rampant, that gaming houses flourish as profitable business and that detection of gambling is extremely difficult, the law to rout out gambling cannot but be in the public interest. Such a law must of necessity provide for special procedure but so long as it is not arbitrary and contains adequate safeguards it cannot be successfully assailed....."

4. In view of the directions given by this Court in **R.Sathya's case** cited *supra*, following the same, I also issue the following directions:

(i) The petitioner Club shall not indulge in any illegal activity under the guise of playing games;

(ii) If there is any evidence of gambling in some other way, the respondent police have a right to enter the premises of the petitioner's Club, inspect and take further action as per law;

(iii) The respondent police are also advised not to disturb the petitioner Club frequently under the guise of inspection, as it would disturb the peace harmony of the petitioner Club;

(iv) The Petitioner and the members of the Club are entitled to carry on lawful activities within their premises and there should not be any interference from the Police Authorities, so long as their activities are not in violation of the provisions of the Public Gambling Act, 1867/Tamil Nadu Gaming Act, 1930;

(v) In normal circumstances, there should be no interference in the lawful functioning of the Clubs by the Police. It is not permissible for the Police to enter the Club premises as a routine measure, so long as the Clubs are functioning within the frame work of law;

(vi) If the Police Authorities have specific information or reasonable doubt that the activities carried on by the Club or its members are not in accordance with law or they indulge in unlawful activities in violation of the provisions of the Public Gambling Act, 1867/Tamil Nadu Gaming Act, 1930 or any other enactment, it would be open to them, after recording reasons in the General Diary maintained in the Police station, to proceed to enter the Club premises, conduct investigation, interrogate those who involve themselves in such activities and take appropriate action on merits and as per law;

(vii) While exercising the powers conferred on the Police Authorities, they should follow the mandatory



provision as contained in Section 5 of the Tamil Nadu Gaming Act, 1930/Public Gambling Act, 1867;

(viii) It is always open to the Club or its members to challenge the action taken by the Police, if it was not in accordance with law;

(ix) In case the Police Authorities were of the opinion that a situation has arisen to suspend the operation of the Club in exercise of the powers conferred, they have to issue an order in writing. When there is no authority granted to the Police to issue an order of suspension orally, they are not entitled to pass such oral orders; and

(x) Before passing orders for the purpose of closure of the Club, in exercise of the powers conferred on the authorities, they should follow the Principles of Natural Justice. The Club should be given an opportunity to submit their objections and if so desired, a further opportunity of personal hearing should also be given.

5. The Writ Petition stands disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

SML

To

1.The Superintendent of Police,
Madurai District, Madurai.

2.The Inspector of Police (Town),
Thirumangalam Police Station,
Thirumangalam,
Madurai District.

+1 CC to M/s.P. JANARTHANAN, Advocate SR-90651.

+1 CC to SPL GP SR-90868.

Order made in
W.P. (MD)No.21025 of 2019

Dated: 30.09.2019

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