



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P(MD)No.7087 of 2017

and

CRL.M.P(MD)No.4819 of 2017

1.Naina Mohamed
2.Noorul Haque
3.Jagubar Sadique
4.Mohamed Mumtaj Alikhan
5.Ameer Hussaina Farook
6.Khan Sahib
7.Habeeb Naina Maraikar .. Petitioners/Accused Nos.1 to 7

Vs.

1.The State rep. by
The Inspector of Police,
Keelakarai Police Station,
Ramanathapuram District.
(In Crime No.57 of 2017) .. 1st Respondent/Complainant

2.Vasantha Kumar,
Inspector of Police,
Keelakarai Police Station,
Ramanathapuram,
Ramanathapuram District.
.. 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in Crime No.57 of 2017 on the file of 1st respondent police and quash the same as illegal.

For Petitioners : Mr.J.Sulthan Basha for
M/s.Ajmal Associates
For Respondent : Mr.K.Suyumbulinga Bharathi for R1
Government Advocate (Crl. Side)
No Appearance for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.57 of 2017 pending investigation before the first respondent police.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The allegations as contained in the FIR is that the accused persons sitting inside the farm land belonging to A2, were playing cards for stakes. Immediately, the respondent police apprehended all the accused persons and recovered the cards and also the cash from the place. The FIR was registered for an offence under Section 12 of the Tamilnadu Gaming Act, 1930.

3.The learned counsel for the petitioners submitted that in order to attract an offence under Section 12 of the Tamilnadu Gaming Act, the gaming with cards must have been done in any public street or a public place and in this case admittedly, the gaming happened within the property of A1. The learned counsel therefore, submitted that no offence has been made out in this case. In order to substantiate his submissions, the learned counsel relied upon judgments of this Court in **M.James Arockia Samy Vs. The Inspector of Police, Aaravayal Police Station, Devakottai Taluk, Sivagangai District**, in Crl.O.P.(MD).No.11917 of 2015, dated 22.10.2018 and in **D.Kannan Vs. The Inspector of Police, Thirupuvanam Police Station, Thirupuvanam, Sivagangai District**, in Crl.O.P.(MD).No.1573 of 2015, dated 04.02.2015.

4.The learned Government Advocate (Crl. side) appearing on behalf of the respondent police submitted that the accused persons were playing cards with stakes and there is a legal presumption available under Section 6 of the Act that the persons found gaming with cards in any place are presumed to be playing in a common gaming house. Therefore, on the allegations made in the FIR an offence has been made out and there is no scope for interference in this case. The learned Government Advocate (Crl. side) further submitted that the cards as well as money was seized by the police in the course of investigation.

5.The only issue that requires consideration of this Court is whether the gaming with cards by the accused persons inside the property belonging to A1, will attract the offence under Section 12 of the Tamilnadu Gaming Act. It will be relevant to take note of the judgments cited by the learned counsel for the petitioners. In the Judgment passed in **M.James Arockia Samy Vs. The Inspector of Police, Aaravayal Police Station, Devakottai Taluk, Sivagangai District**, this Court held as follows:

"7.In the case on hand, the place where the alleged occurrence is taken place, is not a common gaming house as defined under Section 3 of the Tamil Nadu Gaming Act, 1930. It is also relevant to consider Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930, which reads as follows :

"8.Penalty for opening etc., a common gaming-house: whoever opens, keeps or uses or permits to



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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 liable on conviction to fine not exceeding five hundred rupees, or to imprisonment not exceeding three months, or to both.

9. 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 liable to fine not exceeding two hundred rupees or to imprisonment not exceeding one month; and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming."

8. In this regard, the learned counsel for the petitioner has relied upon the Judgment reported in 1990(2) MWN Crime 195 in Raman Nair & 13 others & Durai Maharajan V. State, wherein, this Court has held as follows:

"7... To decide a question whether a Club, where gaming in cards is carried on, is a gaming house or not, the relevant consideration is not whether any member of the club makes a profit but whether the club, as a person, occupying or using or keeping the house or room makes a profit. The fact that the police recovered huge sum of money on the table on the date in question is not sufficient to throw any light as to the club or the secretary of the club deriving anything from out of the money available on the table at the relevant time, may be going to the pockets of the members playing the game of cards. As already indicated, that is not sufficient to consider the premises of the club a gaming house under Section 3 of the Act. Once the premises is not proved to be a gaming house, it goes without saying that the petitioners cannot be stated to have committed the offences under Sections 8 and 9 of the Act. 10. It has been repeatedly held that running of a common gaming house is a primordial requisite before a person could be convicted for an offence under Sections 8 and 9 of the Act and gaming is not an offence per se. Even assuming that the allegations purforth by the prosecution is true, it cannot be constituted an offence as



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alleged by the prosecution. In these circumstances, even if the prosecution is allowed to continue, in view of the facts and circumstance of the case, it would be a futile exercise and there is no scope for conviction. Therefore, the materials collected in support of the charges do not disclose the commission of any of the offence or make out a case against the petitioners/accused and as such, the entire criminal proceedings cannot be sustained.

11. Further, in this case, there is absolutely no mention in the report about anybody running a common gaming house. There is no mention about the first petitioner permitting the use of the premises for gaming activities with a view to derive profit or gain for himself. Therefore, the place in which the petitioners played in 'vetty cheetu' and recovered huge sum by the respondents is not a common gaming house. Time and again, this Court has pointed out that gaming is not an offence per se but it is punishable only when it is carried on in a public place for commercialisation purpose and in a common gaming house with profit motive as contemplated under the Gaming Act. However, the law enforcing agencies ignoring the marked differences between play of games in a house or club and gaming activities carried in a common gaming house indulge in endless prosecution merely harass the innocent. Though the new VIP Club obtained orders to carry on lawful activities in the recreation club and petition to Superintendent of Police to direct the Inspector not to prohibit the running of club, the respondent has thought fit to raid the Club. It is nothing but malicious prosecution and it has to be curtailed."

9. In view of the above facts and circumstances of the case, this Court is of the considered opinion that the premises, which was subjected to search and seizure under Section 5 of the Gaming Act, could not be termed as a common gaming house, and therefore, continuance of proceedings, as against the petitioner, would be a clear abuse of process of law and the abuse of process of Court. Every case of playing cards, particularly during festive season, in private property not for the gain and profit of the occupier or owner of the property cannot be termed as gambling in a common gaming house, under



the Act, to constitute an offence."

6. In the Judgment passed in **D.Kannan Vs. The Inspector of Police, Thirupuvanam Police Station, Thirupuvanam, Sivagangai District**, this Court held as follows:

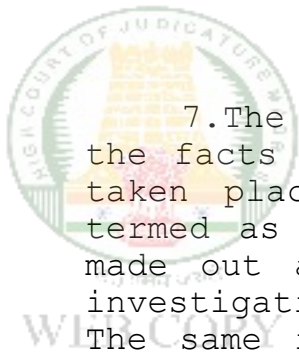
"5. The complainant in the case is the first respondent Inspector of Police. In the instant case the accused admittedly have been found gambling in the house belonging to the second accused. The present case is an instance of persons gambling over a card game and there is no accusation of the second accused using his house as a gaming house and towards reaping profit or gain by so doing.

6. The observation in the judgment of the Panjab - Haryana High Court in Kanwardeep Singh vs. Union Territory Chandigarh on 24 December, 2008 in Crl.M.P.No.54959 of 2006 are apposite:

"In view of the facts and circumstances of the case, I am of the considered opinion that the premises, which was subjected to search and seizure under Section 5 of the Act, could not be termed as a common gaming house, and therefore, continuance of proceedings, as against the petitioner, would be a clear abuse of the process of law and the abuse of process of court. There is no dispute to the fact that the incident is in immediate proximity in time to Diwali festival. Any and every case of playing cards, particularly during festive season, in private property not for the gain and profit of the occupier or owner of property cannot be termed as gambling in a common gaming house, under the Act, to constitute an offence. I am of the opinion, taking in view the facts and circumstances of the case, that it is a case of playing cards during Diwali festivities. The incident is neither in a public place nor in a common gaming house (as defined under the Act). The facts and circumstances do not spell out commission of any offence under the Act."

7. In the case referred to, the incident had taken place during the Diwali festival. In the instant case, the incident had taken place during the Pongal festival.

8. This Criminal Original Petition is allowed and F.I.R. in Crime No.21 of 2015 on the file of the respondent police is quashed. Consequently, connected M.P. (MD) No.1 of 2015 is closed.



7.The ratio in the above two judgments will squarely apply to the facts of the present case. The place at which the gaming had taken place even according to the respondent police, cannot be termed as a common gaming house. Therefore, no offence has been made out as against the petitioners and the continuation of the investigation in this case will amount to abuse of process of law. The same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

8.In the result, the FIR in Crime No.57 of 2017 pending on the file of the first respondent police is hereby quashed and accordingly this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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To

1.The Inspector of Police, Keelakarai Police Station,
Ramanathapuram District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-94839[F] dated
30/10/2019)

CRL.O.P (MD) No. 7087 of 2017

25.10.2019

KK/SAR/18.11.2019/6P-4C/