

IN THE HIGH COURT OF JUDICATURE AT MADRAS

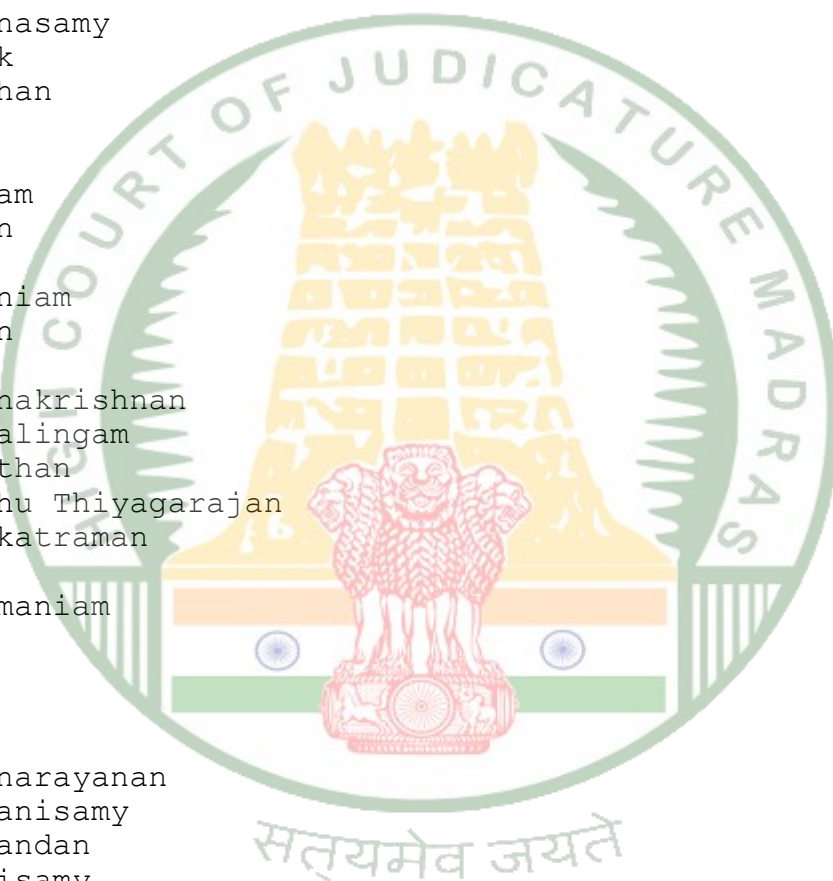
DATED: 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.Nos.23348 & 22864 of 2013 and
Crl.M.P.Nos.1 & 1 of 2013

- 1.Vasudevan
- 2.N.A.Chinnasamy
- 3.Keerthick
- 4.Ranganathan
- 5.Boss
- 6.Ajith ji
- 7.G.Arumugam
- 8.Murugesan
- 9.V.Ramesh
- 10.Subramaniam
- 11.Moidheen
- 12.Ramesh
- 13.T.R.Radhakrishnan
- 14.V.Chokkalingam
- 15.Jagannathan
- 16.Karumuthu Thiagarajan
- 17.N.V.Venkatraman
- 18.B.Hari
- 19.R.Subramaniam
- 20.Mohan
- 21.Kumar
- 22.Jalil
- 23.S.Rajan
- 24.Lakshminarayanan
- 25.T.S.Palanisamy
- 26.Vivekanandan
- 27.Azhagirisamy
- 28.E.Ravi
- 29.Pandian
- 30.Sudhandira Ravi
- 31.Nithiyanandam
- 32.Dlip J.Shah
- 33.N.Shanmugam
- 34.V.K.Velumani
- 35.R.R.Subramaniam
- 36.Venkatachalam
- 37.Nilan R.Shah
- 38.K.Jothi
- 39.Soundararajan
- 40.Shuckan Desai
- 41.R.Nagaraaj
- 42.Rajan
- 43.G.K.Logesh



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44.Ravi
45.Venkatesh
46.Nandhakumar
47.Nandhagopal
48.Renganarasimman

... Petitioner in Crl.O.P.No.23348 of 2013

1.J.Thiyagarajan
2.Dr.S.N.Moorthy
3.A.Sivashanmugakumar
4.Dr.AR.Vijayakumar

... Petitioner in Crl.O.P.No.22864 of 2013

Vs.

The State rep. by the Inspector of Police,
B2, R.S.Puram Police Station [L & O],
Crime No.1276 of 2013,
Coimbatore District.

... Respondents in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the case in S.T.C.No.1393 of 2013 on the file of the learned Judicial Magistrate No.I, Coimbatore and quash the same by allowing this Criminal Original Petition.

In Both Crl.O.Ps

For Petitioners: M/s.N.Manokaran

For Respondent : Mr.C.Iyyappa Raj

Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.No.1393 of the 2013, pending on the file of the Judicial Magistrate No.I, Coimbatore.

2.The case of the prosecution is that on 11.08.2013, the respondent along with the other police personnels, visited R.S.Puram Club and found that nearly 51 persons under the supervision of the 1st accused were playing cards in 16 tables and on enquiry, all the accused admitted the factum of playing cards on payment of table money to the Manager and that the respondent had recovered a sum of Rs.2,88,050/- (Rupees two lakhs eighty eight thousand and fifty only) and 16 sets of cards. Thereafter, the respondent has registered a case in Crime No.1276 of 2013 for the offence under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930, against the petitioners and has filed the charge sheet before the learned Judicial Magistrate No.I, Coimbatore and the same was taken on file as

S.T.C.No.1393 of 2013. Against which, the present Quash Petitions have been filed.

3.M/s.N.Manokaran, learned counsel appearing on behalf of the petitioners submitted that as per the First Information Report, the complainant and the investigation officer are one and the same and as such, the entire proceedings is vitiated and the very First Information Report itself cannot be sustained as against the petitioners. The registration of First Information Report itself is against the fundamental and constitutional right guaranteed under Article 21 of the Constitution of India, since the investigating officer, after receipt of secret information started investigation and also conducted search and seizure without even registering the First Information Report. The learned counsel submitted that the informant and the investigation officer are one and the same. Therefore, the very foundation of fair trial denied to the petitioners. Justice must not only be done, but must appear to be done also. The respondent, registered the case without conducting proper enquiry and mechanically they have registered the cases under the Tamil Nadu Gaming Act. The respondent ought not to have filed charge sheet for the offence under Section 8 and 9 of the Tamil Nadu Gaming Act, since the place of occurrence is not a gaming house.

4.The learned counsel further submitted that when the respondent failed to appreciate the fact that the petitioner club is having valid registration under the Societies Act and its members are having very good name and reputation in the Society, without considering the said facts, the respondent mechanically registered the cases without following any of the procedures laid down under the Tamil Nadu Gaming Act.

5.Further, the learned counsel for the petitioner placed reliance on the order of this Court in CrI.O.P(MD)Nos.21065 of 2018 & 323 of 2019 and batch dated 29.11.2019. Thus, the learned counsel prayed for quashment of the criminal proceedings as against the petitioners herein.

6.The learned Additional Public Prosecutor, appearing on behalf of the respondent, submitted that the respondent and other police personnels, made search in R.S.Puram Club and found all the accused persons were playing cards with stakes and therefore, the respondent arrested the petitioners and registered the case in Crime No.1276 of 2013 for the offence under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930 and therefore, the respondent duly followed the procedures laid down under Sections 5 of the Tamil Nadu Gaming Act.

7.The common gaming house is defined under Section 3 of the Tamil Nadu Gaming Act is as follows:-

"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 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, vessel or place or otherwise howsoever, 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; 'gaming' does not include a lottery but includes wagering or betting, except wagering or betting on a horse race then such wagering or betting takes places."

8. The word otherwise howsoever as interpreted by the Hon'ble Supreme Court of India in Jagat Singh Kishor Singh Dabar Vs. The State of Gujarat reported in AIR 1979 SC 857 will consider the similar provision under Bombay Gambling Act, wherein, it has been held that recovery of gambling materials along with money shall be the evidence to prove that the said place used as common gaming house. It is also followed by this Court in Crl.O.P. (MD).No.27741 of 2012 and held as follows:-

"In the same decision, the term 'otherwise howsoever' appearing in Section 3 of the Act was interpreted to be a comprehensive and does not suggest any limitation. It was further held that if profit or gain is the probable and expected result of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient to bring the case within the scope of the definition of common gaming house."

"Therefore Prima facie it appears that the first accused was in know of the gambling taking place in the room raided by the police and the aspect whether the first accused earned profit or gain is a disputed question of fact, which can be decided only after full-fledged trial".

Further more, it is not disputed that the instruments of gaming were seized from the premises, which shall be in evidence until the contrary is proved that room, house or place is used as a common gaming house and the persons found therein were present for the purpose of gaming."

9. Similarly earlier Judgment 1938 Madras 705 in page 706, it has been held as follow:-

"That means that although there may not be any independent proof that any person makes a profit from this gambling or from the use of room for gambling, yet the mere finding of cards and instruments of gambling in a house searched on such a warrant, is evidence that the room was used for gambling and that some person was deriving a profit from it.

Further in 1964 MLJ 404, it has been held as follows:

The second point is with regard to adequacy of the evidence let in to show that the place was really used as a common gaming house. This point does not appear to have much substance, in view of the very clear evidence that not merely were these revision petitions then engaged in gaming with cards, but that betting materials were seized, including both cards and a cast to the tune of Rs.156-99 n.p. These would constitute evidence under Section 6 of the Act III of 1930 that the place was 'used as a' common gaming house; it is urged that the material objects are not exhibited."

10. Further the petitioner's contention are all disputed facts, which could not be decided in a quash petition. The grievance of the petitioner is to be decided only at the time of trial.

11. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

12. It is seen that the respondent made search and found that the accused persons were playing cards in the Club, which is duly registered under the Tamil Nadu Societies and Registration Act, 1975. Under the Tamil Nadu Gaming Act, 1930:-

"The 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 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, vessel or place or otherwise howsoever 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; 'gaming' does not include a lottery but includes wagering or betting.

13.The game of playing cards is not an offence per se. It is an offence only when it is carried on in a public place or in a common gaming house as defined under the Act. It is also very clear that profit or gain is the primordial requisite for running a common gaming house. Unless and until the prosecution proves that there was profit or gain by the owner or occupier of the place, the same would not come under the definition of common gaming house.

14.It is relevant to rely upon the Judgment reported in 1983 LW CrL. 183 in the case of Sundaram and Others Vs. The State of Sub Inspector of Police, Kovilpatti Police Station, wherein, it has been held as follows:-

"In a number of cases, it has been held that the running of a common gaming house is a primordial requisite before anyone can be convicted under Section 8 and 9 of the Act, as early as in Santhanam Iyengar Vs. State, Ramaswamy, J. has pointed out as follows:-

Gaming is not an offence per se. 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 or its local variants. The Act nowhere penalizes gaming as such. Therefore, gambling in a private house, being neither within the ambit of S.8 nor of S.12, is not an offence under the Act"

9.Again in C.R.Subramaniam and others in re, Natesan, J., has pointed out that:

"The cardinal constituent for an offence under Sec.45 and 46 of the (City Police) Act is that the place used for gaming should be a common gaming house as defined in the (City Police) Act. Profit or gain to the persons owning, occupying, using, keeping the place, whether by way of a charge for the instruments of gaming or of the place or otherwise howsoever is a necessary and primary element and when that is not established, there can be no offence under S.45 and S.46 of the Act. What is prohibited is not game of cards for stakes, but playing the game in a common gaming house"

10. I myself had consider this question in Padmanabhan, etc. Vs State and I have held as follows:-

"Having regard to the standing of the club in the present case and its activities and the strate of society from which its office bearers are drawn, it is very doubtful if the club would have been used as a common gaming house. As I have stated at the outset, the mere playing of cards for stakes will not make the club a common gaming house as envisaged under the gaming Act or the City Police Act. It is rather unfortunate that law enforcing agencies have still not realized the market difference between the play of games in a club or house and gaming activities carried on in a common gaming house. This lack of understanding often leads to harassing prosecutions and needless embarrassments."

11. Still later, Sathar sayeed, J., had to consider this question on Arumugham etc., Vs State. The learned Judge ordered the quashing of the proceedings against the petitioners in that case and held as follows:-

In the charge-sheet filed by the police, I do not find any allegation that the petitioners, who are the members of the club, were playing for commercialisation purposes nor there are any such allegations so as to come within the purview of Ss.8 and 9 of the Gaming Act. There is not even a whisper in the charge-sheet that the Indian officer' club is gaming house or fir that matter; any money was collected or that the premises was used for profit or gain. The charge-sheet taken on its face value, I am of the view, does not come within the purview of Section 8 and 9 of the Gaming Act."

12. In spite of the legal position being well settled, the police authorities, particularly the lower strata officers seem to be completely unaware of the provisions of law. It is not known whether their ignorance of the correct legal position is on account of lack of proper instructions or due to a wanton attitude to flout

the law. On this ground alone, the proceedings pending before the Court below deserve to be quashed. But something more has to be said in the case."

15.Further, in this case, charge sheet was filed, the respective officer, who registered the case and the respective investigating officer are one and the same. In the decision in Mohan Lal Vs. The State of Punjab in Criminal Appeal No.1880 of 2011, the Hon'ble Supreme Court of India has categorically held that the foundation of the fair trial postulates that the informant and the investigator must not be the same person.

16.Therefore, the entire proceedings are vitiated and it cannot be sustainable. Any possibility of bias or pre-determent conclusion has to be excluded. Therefore, the investigating officer and the informant cannot be the same person.

17.In view of the above, this Criminal Original Petition is allowed. The proceedings in S.T.C.No.1393 of 2013, pending on the file of the learned Judicial Magistrate No.I, Coimbatore is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vv2

To

1.The Judicial Magistrate No.I,
Coimbatore.

2.The Inspector of Police,
B2, R.S.Puram Police Station [L & O],
Coimbatore District.

3.The Public Prosecutor,
High Court of Madras.

+2cc to Mr.N.Manoharan, Advocate, S.R.No. 2498, 2499

CRL.O.P.Nos.23348 & 22864 of 2013

SJ(CO)
GN(17/02/2020)