

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.Nos.29833 & 29834 of 2013
and
Crl.M.P.Nos.1 & 1 of 2013

Prakash

...Petitioner in

Crl.O.P.No.29833 of 2013

- 1.Dayalan
- 2.Ravikumar
- 3.Umabathy
- 4.Kandhan
- 5.Dharmaraj
- 6.Dinakaran
- 7.Sridhar
- 8.Rajkamal
- 9.Shanmuganathan
- 10.Sakthivel
- 11.Vasu
- 12.Manokar
- 13.Jayapal
- 14.Magalingam
- 15.Viduthalaiselvan
- 16.Thiruneelagandan
- 17.Kuppusamy
- 18.Murugan
- 19.Gnanasekaran
- 20.Babu

...sl.no.1 to 20 are Petitioners
in Crl.O.P.No.29834 of 2013

सत्यमेव जयते
Vs.

The State rep. by
the Inspector of Police,
V-1, Villivakkam Police Station,
Chennai.

...Respondent in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, to call for the records and to quash the FIR in Crime No.1729 of 2013 on the file of respondent police.

In Both Crl.O.Ps

For Petitioners : Mr.R.Muniyapparaj

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in Crime No.1729 of 2013 on the file of respondent police.

2.The case of the prosecution is that on 12.10.2013, the respondent along with the other police personnel, visited MVP Recreation Club and found that nearly 22 persons under the supervision of the 1st accused were playing cards in 2 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.1,69,080/- (Rupees one lakh sixty nine thousand and eighty only) and 10 sets of cards. Thereafter, the respondent has registered a case in Crime No.1729 of 2013 for the offence under Sections 4(i)(a), 4(1-A) TNP Act and 45 and 46 of MCP Act. Now the petitioners have come forward with the present petitions, seeking to quash the FIR.

3.Mr.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 in this case, the informant and the investigation officer are one and the same. Therefore, the very foundation of fair trial would be denied to the petitioners. Justice must not only be done, but must also appear to be done. The respondent, registered the case without conducting proper enquiry and mechanically they have registered the cases under Sections 4(i)(a), 4(1-A) TNP Act and 45 and 46 of MCP Act. The respondent ought not to have added 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 what 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.Learned counsel for the petitioners placed reliance on the order of this Court in Crl.O.P(MD)Nos.21065 of 2018 & 323 of 2019 and batch dated 29.11.2019.

6.Learned counsel for the petitioners draw the attention of this court to the definition of Common Gaming House as defined under Section 3 of the Tamil Nadu Gaming Act which 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.?"

7.The word otherwise howsoever as interpreted by the Honble Supreme Court of India in Jagat Singh Kishor Singh Dabar Vs. The State of Gujarat reported in AIR 1979 SC 857 while considering similar provision under Bombay Gambling Act, wherein, it has been held that recovery of gambling materials along with money shall be 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."

8. In AIR 1938 Madras 705, similar observation has been rendered, which is as follows:-

"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.

9. 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."

Thus, the learned counsel prayed for quashment of the criminal proceedings as against the petitioners herein.

10. Per contra, the learned Additional Public Prosecutor, appearing on behalf of the respondent, submitted that the

respondent and other police personnel, made search in MVP Recreation 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.1729 of 2013 for the offence under Sections 4(i)(a), 4(1-A)TNP Act and 45 and 46 of MCP Act and therefore, the respondent duly followed the procedures laid down under Sections 5 of the Tamil Nadu Gaming Act.

11. It is the further contention of learned Additional Public Prosecutor appearing for State that all disputed facts could not be decided in a quash petition and the grievance of the petitioners could be decided only at the time of investigation.

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

13. It is evident from the materials on record that pursuant to a search made the respondent found that the accused persons were playing cards in the Club, which is duly registered under the Tamil Nadu Societies and Registration Act, 1975.

14. Common Gaming House is defined under Section 3 of the Act, which has already been quoted supra. 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.

15. It is relevant to rely upon the Judgment reported in Sundaram and Others Vs. The State of Sub Inspector of Police, Kovilpatti Police Station, 1983 LW (crl) 183, 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 considered 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 strata 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 commercialization 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.

16. Rightly so, it is contended by the learned counsel for the petitioners that the informers and investigator cannot be one and the same, as it would vitiate the investigation. In this case, charge sheet was filed by the officer, who registered the case and investigated the same. In such circumstances, the decision of the Hon'ble Apex Court in Mohan Lal Vs. The State of Punjab in Criminal Appeal No.1880 of 2011, would stand attracted, wherein the Hon'ble Apex Court has categorically held that the foundation of fair trial postulates that the informant and the investigator must not be the same person.

17. In the case on hand, it is not in dispute that the informant and the investigator are one and the same person, and, therefore, necessarily the investigation stand vitiated. Therefore, the entire proceedings are vitiated and it is not sustainable as any possibility of bias or pre-determined conclusion has to be excluded.

18. In view of the above, these Criminal Original Petitions are allowed. The proceedings in Crime No.1729 of 2013 on the file of respondent police is hereby, quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

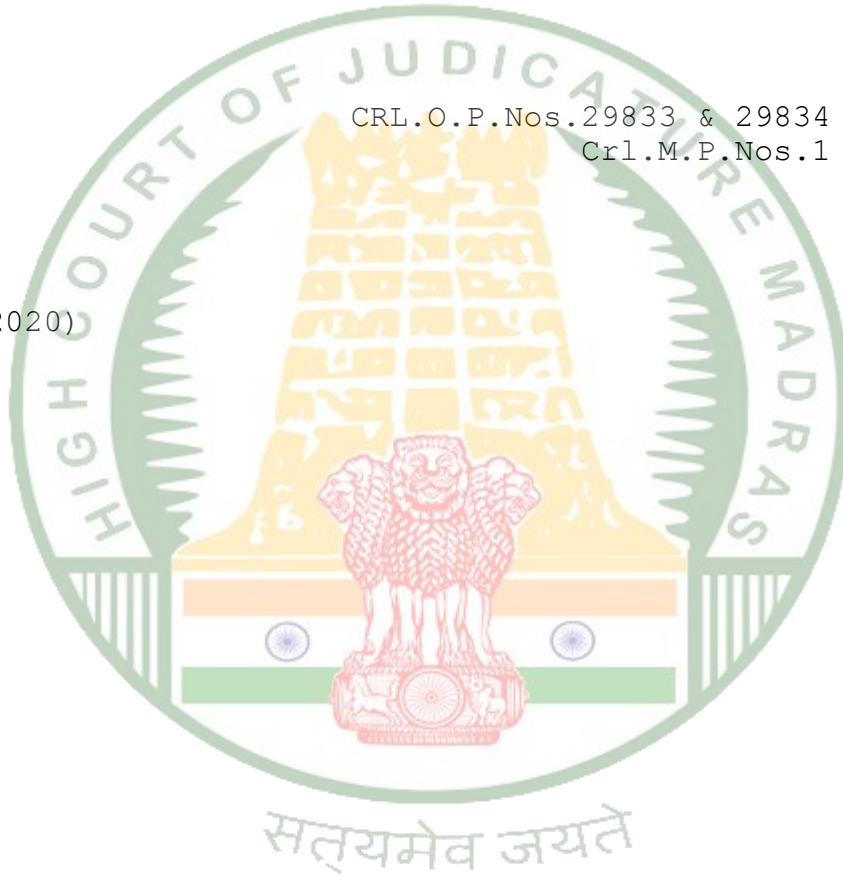
1.The Inspector of Police,
V-1, Villivakkam Police Station,
Chennai.

2.The Public Prosecutor,
High Court of Madras.

+lcc to M/s.R.Muniyapparaj, Advocate, S.R.No.6722

CRL.O.P.Nos.29833 & 29834 of 2013 and
Crl.M.P.Nos.1 & 1 of 2013

RSV(CO)
RN(05/06/2020)



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