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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. No. 29901 of 2019

and

Crl.M.P. No. 16119 of 2019

1. K.S.Subiramani
2. Shanmugaraju
3. Palanisamy
4. N.Ganesan
5. Kettimuthu
6. Muthusamy
7. C.Palanisamy
8. G.Rajan
9. Nattu Durai
10. Siva Shanmugam
- 11.Chinnappan @ Palanisamy
12. M.Shanmugam

... Petitioners

Vs.

The Inspector of Police,
Dharapuram Police Station,
Dharapuram, Tiruppur District.
Crime No.440 of 2013.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceeding in S.T.C. No. 531 of 2015 on the file of the Hon'ble Judicial Magistrate, Dharapuram, Tiruppur District.

For Petitioners : Mr.K.V.Muthu Visakan

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

ORDER

This Criminal Original Petition has been filed to call for the records and quash the proceeding in S.T.C. No. 531 of 2015 on the file of the Hon'ble Judicial Magistrate, Dharapuram, Tiruppur District.



2. It is seen from records that F.I.R. was registered in Crime No.440 of 2013 against the petitioners for an offence under Sections 8 and 9 of Tamil Nadu Gaming Act, 1930 on the ground that the petitioners split into three groups and playing cards as allegedly Vettuattam and the petitioners used tokens instead of money for playing which was issued by the 1st petitioner to other petitioners after receiving the cash. It is also seen that the complainant in the F.I.R. is the Inspector of Police, Dharapuram Police Station.

3. Only point raised by the petitioners is that the complainant as well as the officer, who registered the First Information Report are one and the same. Therefore, the entire proceedings is vitiated by relying upon the judgment of the Honourable Supreme Court of India, in Mohan Lal .Vs. The State of Punjab, in Crl.A.No.1880 of 2011 dt.16.08.2018.

4. The case is squarely covered by the above said judgment of the Honourable Supreme Court of India, in Mohan Lal .Vs. The State of Punjab, in Crl.A.No.1880 of 2011 dt.16.08.2018. It will be useful to extract the relevant portions of the judgment which is as follows:

"5. We have considered the submissions on behalf of the parties. The primary question for our consideration in the present appeal is, whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof.

11. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in



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the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.

12. That investigation in a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on part of the accused was noticed in Babubhai vs. State of Gujarat, (2010) 12 SCC 254 as follows:

"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth".

33. In State of Bihar v. P.P. Sharma this Court has held as under:

"57. ... Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism. ... Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the investigating officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.

* * *



25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial,



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necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

26. Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case".

5. Here is a case where the complainant is the Investigation Officer. Therefore, the entire investigation becomes vitiated as held by the Honourable Supreme Court in the judgment referred supra.

6. In the facts and circumstances of the case, the proceedings in S.T.C.No.531 of 2015 on the file of the Judicial Magistrate, Dharapuram, Tiruppur District, for the offences under Sections 8 and 9 of the Tamil Nadu Gambling Act, 1930 is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Dharapuram.
2. The Inspector of Police,
Dharapuram Police Station,
Dharapuram, Tiruppur District.



3. The Public Prosecutor,
High Court, Madras.

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The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.K.V.Muthuviskam, Advocate, S.R.No.20153

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and
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SSV(CO)
KKV/13/07/2020