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Crl.O.P.(MD)No.11405 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.11405 of 2020

and

Crl.M.P. (MD)No.5208 of 2020

Maheswaran

...Petitioner/Accused No.1

Vs.

1.The State represented by

The Inspector of Police,

Kulathur Police Station,

Thoothukudi District.

(In Crime No.117 of 2020) ...1st Respondent/Complainant

2.Devaraj

...2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the case registered in the Impugned First Information Report in Crime No.117 of 2020 on the file of the 1st respondent and quash the same as illegal insofar as the petitioner/1st accused alone is concerned.

For Petitioner

: Mr.J.Lawrance

For R1

: Mr.V.Neelakandan,

Additional Public Prosecutor

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

2.This criminal original petition has been filed for quashing the First Information Report in Crime No.117 of 2020 registered on the file of the first respondent for the offences under Sections 188 and 269 of I.P.C. and Section 12 of Tamil Nadu Gaming Act, 19309.

3.The case of the prosecution is that on 11.07.2020 at about 12.00 pm., when the respondent police were on their patrol duty, they saw the petitioner and other accused playing the card game (rummy) for stakes in violation of the lockdown restrictions. The respondent police also seized a sum of Rs.400/- from the accused. To quash the same, this criminal original petition has been filed.

4.The learned counsel appearing for the petitioner reiterated the contentions set out in the memorandum of grounds and wanted this Court to quash the impugned FIR. Per contra, the learned Additional



Public Prosecutor submitted that no case for quashing has been made out.

5.I carefully considered the rival contentions and went through the materials on record. It is not in dispute that a learned Judge of this Court vide order dated 20.09.2018 made in CrI.O.P.(MD)No.1356 of 2018 and batch has held that a police officer cannot register an FIR for the offence under Section 188 of I.P.C. The said decision squarely applies to the case on hand. Therefore, the registration of the impugned FIR for the offence under Section 188 of I.P.C. is liable to be quashed.

6.Section 269 of I.P.C. reads as follows:-

"269. Negligent act likely to spread infection of disease dangerous to life.-

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

7.The petitioner's specific case is that in their village there is not even single case of Covid-19 infection. The FIR was registered as early as 11.07.2020. More than three and half months have elapsed, till date in the village not even single case of infection has been reported. Therefore, the subsequent events clearly vindicate the stand of the petitioner that he had not done anything so as to spread the inspection of the decease. I am therefore of the view that Section 269 of I.P.C. also cannot be invoked in this case.

8.The petitioner was only allegedly playing cards under a tree. It has been held vide order 24.07.2020 in CrI.O.P.(MD)No.6568 of 2020 that in such a case, Section 12 of Tamil Nadu Gaming Act, 1930 will not be attracted as it cannot be called as common gaming house. The learned Judge in the said decision has held as follows:-

*"16. As per the dictum laid down by this Court in **J.Raghunadhu v. Emperor**, reported in **1933 Mad WN 1422**, the pial of a private house, which has access to the public street cannot be termed as a public place as contemplated under the Act.*

17. This Court, in **Raman Nair and others v. State**, reported in **1990 (2) MWN Crime 195**, has held as follows:

"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



offence per se. Even assuming that the allegations put forth by the prosecution is true, it cannot be constituted an offence as 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 chettu' 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."

18. The Punjab and Haryana High Court, in **Kanwardeep Singh v. Union Territory of Chandigarh**, in **Crl.M.P.No.54959 of 2006, dated 24.12.2008**, has held as follows:

"...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)."

19. The ratio laid down in the aforesaid decisions will squarely apply to the present case on hand. The place at which the gaming had taken place, even according to the respondent Police, is near a thorny bush, cannot be termed as a common gaming house. As the continuation of the investigation in this case will amount to abuse of process of law, this Court is inclined to interfere with the proceedings."

9. Respectfully following the aforesaid decision, I hold that Section 12 of Tamil Nadu Gaming Act, 1930 is also not attracted. Thus looked at from any angle, the very registration of the impugned FIR against the petitioner is unwarranted. Therefore, the same is quashed. The criminal original petition is allowed. The benefit of this order will also enure in favour of the non-petitioning accused. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

1. The Inspector of Police,
Kulathur Police Station,
Thoothukudi District.

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

+1 CC to M/s.J.LAWRANCE, Advocate (SR-20765[F] dated 02/11/2020)

CrI.O.P(MD)No.11405 of 2020

29.10.2020

ARK(CO)

KB(14.12.2020) 4P 4C