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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.10.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.Nos.19794 & 19795/2016
& Crl.MP.Nos.9245&9246/2016

[Video Conferencing]

R.Seethapathy

... Petitioner in Crl.OP.No.19794/2016

K.Dhayalan

... Petitioner in Crl.OP.No.19794/2016

Versus

The Inspector of Police,
V-7, Nolambur Police Station,
Chennai - 600 037.

... Respondent in both Petitions

Common Prayer : - Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for records and quash the proceedings in S.T.C.No.176/2016 on the file of Judicial Magistrate, Ambattur, as against the petitioners/7th Accused & 1st accused, and consequently direct the respondent police to pay a sum of Rs.2,00,000/- to the petitioner towards compensation for the mental agony, loss of name and reputation.

For Petitioners in
both Petitions : Mr.R.Prabhakaran

For Respondent in
both Petitions : Mr.E.Raj Thilak
Additional Public Prosecutor

COMMON ORDER

- (1) Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.



- (2) Both the petitions have been filed questioning the further continuation of STC.No.176/2016 on the file of the learned Judicial Magistrate, Ambattur.
- (3) CrI.OP.No.19794/2016 has been filed by the 7th accused and CrI.OP.No.19795/2016 has been filed by the 1st accused.
- (4) A FIR in Crime No.905/2014 came to be registered by the Inspector of Police, V7 Nolambur Police Station, who is the respondent herein, who claimed that information had been received at 22.00 hours on 06.05.2014 that a group of people were gambling with money at stake in a public place. Immediately, on receipt of information, after registering the FIR, the respondent police had gone over to the said public place which was a vacant place in Venugopal Street, where the respondent police found the accused persons playing cards with money at stake.
- (5) Mr.R.Prabhakaran, learned counsel for the petitioners raised a doubt whether the said gambling took place, was a public place or not a public place. That is an issue of fact. It is also contended by the learned counsel that at the very same place, a sum of Rs.40,500/- had been seized. It is contended that there were no independent witnesses for such seizure.
- (6) However, this fact is disputed by the learned Additional Public Prosecutor appearing for the respondent, who pointed out that there were actually independent witnesses who had also been cited as witnesses for the prosecution.
- (7) The other ground taken by the learned counsel for the petitioners is that the FIR was registered on 06.05.2014 and on that date, a sum of Rs.40,500/- had been seized. Thereafter, the Final Report had not been filed by the respondent police. The petitioners had given a complaint to the Assistant Commissioner of Police on 27.06.2016 questioning the retention of the amount seized.
- (8) It had been contended that immediately thereafter, the respondent police had remitted the said amount to the Judicial Magistrate Court on 04.07.2016 and also filed a Final Report.
- (9) The learned counsel for the petitioners lamented that the said amount had been retained by the police for nearly two years and necessary explanation will have to be given in that regard.



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- (10) Explanation in that regard can be given only by the Investigating Officer and during the cross examination, the petitioners herein can put such questions to the said Investigating Officer questioning as to the reason for amount being retained by him for a period of two years.
- (11) The learned counsel also stated that under the Gambling Act, necessary permission had to be obtained from the Magistrate Court before proceeding further to effect either arrest or seizure and in this connection, had also relied on a decision of a learned Single Judge of this Court reported in 2014 [1] Law Weekly [Cri.] 989 [Best Ramasamy Vs. The Deputy Superintendent of Police, Tiruppur and another].
- (12) Here in this particular case, information had been received at 22.00 hours on 06.05.2014 and thereafter, since the act of gambling on going, at that very time, the police had taken immediate steps to go over to the place and to arrest the persons involved and to seize the money.
- (13) If there is a procedural irregularity in the same, the accused persons can point out the same during the course of trial and urge the learned Judicial Magistrate to take note of that particular fact.
- (14) The learned Additional Public Prosecutor had also forwarded the CD File wherein it is seen that for preparation of the Observation Mahazar, there were two independent witnesses. Therefore, the contention that there were only police witnesses as stated by the learned counsel for the petitioners, is rejected by me.
- (15) All these issues will have to go to trial. The questions raised by the learned counsel can be addressed to the Investigating Officer who will naturally have an obligation to answer them in the witness box. Let trial therefore, proceed further.
- (16) With the above observations, the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



AP

To

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1. The Judicial Magistrate,
Ambattur.
2. The Inspector of Police,
V-7, Nolambur Police Station,
Chennai - 600 037.
3. The Public Prosecutor
High Court, Madras.

Crl.OP.Nos.19794 & 19795/2016

PMK (CO)
PR (26/10/2021)