



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.07.2021

DELIVERED ON : 26.07.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **G. ILANGO VAN**

Crl.O.P. (MD)No.5205 of 2021

CRL.M.P (MD) .No. 3000 of 2021

1.M.Thirunavukkarasu

2.Ganesan

3.Kumar

4.Joseph (Raj)

5.Rajamanickam

6.Manokaran

... Petitioners/Accused No 1 to 6

Vs.

1. The Inspector of Police,
Gandarvakkottai Police Station,
Pudukottai District.
Crime No.126 of 2021.

2.R.Singaravel,
Inspector of Police,
Gandarvakottai Police Station,
Pudukottai District. ... Respondents 1,2/Complainant & Defacto
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the Final Report in S.T.C.No.50 of 2021 on the file of the Munsif cum Judicial Magistrate, Gandarvakottai and quash the same as arbitrary and illegal by allowing this Criminal Original Petition.

For Petitioners : Mr.K.Baalasundharam

For Respondents : Mr.R.M.Anbunithi

Additional Public Prosecutor for R1

O R D E R

This petition has been filed to call for the records pertaining to the Final Report in S.T.C.No.50 of 2021 on the file of the Munsif cum Judicial Magistrate, Gandarvakottai and quash the same as



arbitrary and illegal by allowing this Criminal Original Petition.

2. The case of the prosecution is that on 04.02.2021, at about 16.00, on secret information, the Police inspected "Maruthu Manamahilvu Sangam" and found that the accused persons were playing cards for profit. Therefore, a case was registered against these petitioners under Section 12 of Tamil Nadu Gaming Act. After collecting materials and recording the statement of witnesses, final report has been presented before the District Munsif cum Judicial Magistrate, Gandarvakottai on 04.02.2021 and the same was taken on file in S.T.C.No.50 of 2021.

3. Seeking quashment of the final report, this petition has been filed mainly on the ground that no such gaming activity has been undertaken in the premises as mentioned by the first respondent and a false case has been foisted, the entire offence is a stage-managed one. Because of frequent trouble made by the police, the petitioners filed a writ petition in W.P(MD).No.19769 of 2019 for a direction not to interfere into the day-to-day activities of the club. The club was issued with a license by the Licensing Authority namely, the Tahsildar, Gandharvakkottai in License No.3 of 2019 under Form-D vide R.C.No.5378/2019/B4 dated 16.10.2019. By way of license, rummy was allowed to be played. The entire stage-managed event has been captured through the mobile, camera. Moreover, the offence under Section 12 of the Tamil Nadu Gaming Act will not be attracted.

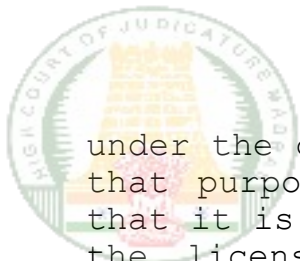
4. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

5. A simple question arises for consideration is that whether any gaming activity for profit was played in the premises which is called as "Maruthu Manamahilvu Sangam" on 04.12.2021 or not?. Section 12 of the Tamil Nadu Gaming Act reads as under:

12. Whoever is found gaming with cards, dice, counters, money or other instruments of gaming in any public street, place or thoroughfare or publicly fighting cocks, shall be liable on conviction to fine not exceeding [one hundred rupees] or to imprisonment not exceeding [three months] : and such instruments of gaming and moneys shall be forfeited.

6. From the First Information Report as well as the Recovery Mahazar, it is seen that 52 cards were used, when the police party inspected the place.

7. The next question arises for consideration is that whether the above said Maruthu Manamahilvu Sangam will come
<https://hcmr.judges.org/judges/>



under the category of the public place? that has to be answered. For that purpose, the learned counsel for the petitioner would submit that it is a private entertainment Sangam, which is operating as per the license granted by the Tahsildar. Therefore, the private persons/unknown members are not permitted into the club. It will not come under the category of public place as mentioned under Section 12. But, it is only a private club, where the entertainment activities such as rummy are also permitted, as per the license. The copy of the license is also produced by the petitioner in the typed set of papers, wherein, Chess, Carrom, Ramm are also permitted, which reads as under:

"License is hereby granted to "MARUTHU MANAMAHILVU SANGAM" Murugaiah Lodge, 1022A Mariamman Kovil Street, Gandarvakottai Village, Gandarvakottai, Pudukottai District. For the purpose and in respect of building specified in the statement below the subject to the condition and for period mentioned hereunder. The period of the validity of the license shall be for the period of three years 16.10.2019 to 30.09.2022

STATEMENT TO ACCOMPANY THE LICENSE

1.	Location of the building & Address	:	MARUTHU MANAMAHILVU SANGAM Nattam S.No.358/10 Kovilur Village, Gandarvakottai, Pudukkottai District.
2.	Purpose for which the building is licensed to be used as a public building	:	To Run a Maruthu MANAMAHILVU SANGAM Purpose with Indoor Games (Chess, Carrom, Rammy). As per Madras High Court Madurai Bench Orders passed on W.P. (MD). No.19769/2019 Dated:16.09.2019
3.	No. of persons to be accommodated	:	150 Nos

8. It is clear on record to show that it is a private club where the public are not permitted and it will not come under the category of public place. But, as per Section 12 of the Tamil Nadu Gaming Act, playing game in a place is also punishable. Therefore, the question arises for consideration is that whether playing cards at the time of inspection is attracted under Section 12 of the Tamil Nadu Gaming Act or not?. As mentioned earlier, 52 cards have been seized from that place and the accused persons were also playing the cards for profit. The contention on the part of the petitioner that the entire occurrence is a stage managed one by the Police is totally unbelievable. There is no reason or purpose for the Police to enact such Drama and prosecute the petitioners under the criminal law. Such an allegation is unsustainable one.



9.The next question arises for consideration is that whether playing the cards in a place will attract the offence under Section 12 of the Tamil Nadu Gaming Act?. Mere playing in the public place or private place is not an offence per se. But it will become an offence, only when it is played for money. In this case, no material has been collected by the Investigating Officer to show that the petitioner's who are in-charge of the private club are collecting money for the purpose of permitting the members to play the cards for profit. It has been stated that the accused persons were found playing the cards and no money has been recovered from that place or from the accused persons who allegedly engaged in playing the cards. In the absence of any such recovery to show that Maruthu Manamahilvu Sangam Office Bearers collected money for the purpose of permitting the members to play the cards, the offence under Section 12 of the Tamil Nadu Gaming Act is not attracted.

10. The petitioner would rely upon the number of judgments to show that the above said "Maruthu Manamahilvu Sangam" cannot be termed as common gaming place as defined under the Act. It need not be taken into account as the issue does not arise at all here. As mentioned earlier, no material has been collected to show that the said "Maruthu Manamahilvu Sangam" was collecting money for permitting the members to play the cards and the ingredients of the offence under Section 12 of the Tamil Nadu Gaming Act are not attracted.

11. Accordingly, the Criminal Original Petition is allowed and the proceeding in S.T.C.No.50 of 2021 pending on the file of the District Munsif cum Judicial Magistrate, Gandarvakottai is quashed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

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 District Munsif Cum Judicial Magistrate,
Pudukottai District.

2.The Inspector of Police,
Gandarvakkottai Police Station,
Pudukottai District.
Crime No.126 of 2021.

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

CrI.O.P. (MD)No.5205 of 2021
26.07.2021

MGJ(03.08.2021) 5P 4C