



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.16137 of 2021

and

Crl.M.P(MD)No.8672 of 2021

Subash

... Petitioner/Accused No.1

Vs.

State Rep. by its

1.The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.
(Crime No.398 of 2020)

... 1st Respondent/Complainant

2.Narendra Singh

... 2nd Respondent/Defacto-Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Crime No.398 of 2020 pending investigation on the file of the 1st respondent police and quash the same as against the petitioner.

For Petitioner : Mr.P.T.Ramesh Raja
For R1 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed to quash the impugned FIR in Crime No.398 of 2020 registered on the file of the first respondent for the offence under Section 188 and 269 of I.P.C and Section 12 of Tamil Nadu Gaming Act, 1930.

2.It is submitted by the learned Additional Public Prosecutor that the final report has been filed, but it has not been taken on file so far. I went through the contents of the FIR as well as the final report made available by the Additional Public Prosecutor. It is seen therefrom that the case of the prosecution is that on 21.05.2020 at about 10.30 a.m. when the police patrol party were on their rounds, they came across the petitioners sitting in a circle and playing the game of mangatha for stakes. It is also stated that Covid protocol had been breached by the petitioners herein. That led to registration of the impugned FIR in Crime No.398 of 2020 on the file of the first respondent on 21.05.2020



based on the complaint of the Head Constable.

3. Section 12 of the Tamil Nadu Gaming Act, 1930 states that 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, are liable to be punished. Section 12 of the Act will be attracted only if it is shown that the accused have indulged in gambling in a common gaming house or in any public place. Unless the place where the occurrence took place is specified, the entire charge will have to be struck down. Only if the charges are clear, the provision in question will be attracted. In the case on hand, nowhere it is stated as to where the occurrence took place. Since the offending place has not been specified, it is certainly a ground for quashing.

4. Section 188 of IPC will be attracted only if there was any disobedience to an order duly promulgated by a public servant. In the case on hand, no such disobedience has been shown. It is not the case of the prosecution that the petitioner was affected by Covid-19 during the relevant time. It clearly vindicates the stand of the petitioner that he had not done anything so as to spread the infection. I am therefore of the view that Section 269 of I.P.C. also cannot be invoked in this case. Continuance of the impugned prosecution will not serve any purpose. The impugned prosecution is quashed.

5. This Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

gbg/btr

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,
Kulasekaram Police Station,
Kanyakumari District.

<https://hcservices.ecourts.gov.in/hcservices/>



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

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-33891[F] dated
10/11/2021)

Crl.O.P(MD)No.16137 of 2021
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RS(26.11.2021) 3P 4C