



CrI.O.P.No.20064 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.O.P.No.20064 of 2022

and

CrI.M.P.No.13179 of 2022

S.Selvakumar ... Petitioner

/vs/

State Rep.by
The Sub Inspector of Police,
Salem Town Police Station,
Salem District.
Crime No.101 of 2022 ... Respondent

Prayer : The Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records pertaining to Crime No.101 of 2022 dated 22.06.2022 on the file of the respondent police herein and quash the same by allowing this criminal original petition.

For Petitioner ... Mr.R.Marudhachalamurthy
For Respondent ... Mr.E.Raj Thilak
Additional Public Prosecutor



CrI.O.P.No.20064 of 2022

WEB COPY

ORDER

This criminal original petition has been filed to call for the records pertaining to Crime No.101 of 2022 dated 22.06.2022 on the file of the respondent police herein and quash the same.

2.The learned counsel for the petitioner submitted that the respondent police registered a case against the petitioner in Crime No.101 of 2022 on 22.06.2022 for the offences punishable under Sections 8 & 9 of the Tamil Nadu Gaming Act, 1930. The learned counsel for the petitioner further contended that according to the prosecution, the petitioner was playing cards at The Salem Literary Society, near Palace Theatre, Salem. While the defacto complainant and other police are making a routine patrol duty, they got information and entered into the Literary Society room and arrested one person and four other persons escaped and seized an amount of Rs.2,500/- and now, investigation is pending. The place of occurrence viz., The Salem Literary Society is not a gaming house as taken in the Tamil Nadu Gaming Act, 1930. The definition of gaming house runs as follows:



WEB COPY



Crl.O.P.No.20064 of 2022

In this Act, unless there is anything repugnant in the subject or context,-

(a)"common gaming-house" means any house, room, tent, enclosure, vehicle, vessel, cyber cafe or any place whatsoever in which instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel, cyber cafe or place, whether free of cost or by way of charge for the use of instruments of gaming or of the house, room, tent, enclosure, vehicle, vessel, cyber cafe or place and includes any house, room, tent, enclosure, vehicle, vessel, cyber cafe or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming;"

3.Further, the learned counsel relied upon the following judgements;



Crl.O.P.No.20064 of 2022

1.The order of this Court in Crl.O.P.(MD).No.13039 of 2015 dated 23.10.2018 (Veerabathran and 7 others Vs. Inspector of Police, Solavanthan Police Station, Madurai District)

2.The order of this Court in Crl.O.P.(MD).No.21065 of 2018 and 5 other matters in Crl.O.P.(MD).No.21065 of 2018 (Pandiyarajan and 33 others Vs.The Inspector of Police, Arupukottai Town Police Station, Virudhunagar District.

3.The order of this Court in Crl.O.P.17317 of 2021 dated 01.09.2022 (Mani and 5 others Vs. The Sub Inspector of Police, Salem Town Police Station, Salem District.

4.The order of this Court in W.A.No.2287 of 2011 dated 22.03.2012 (The Director General of Police, State of Tamil Nadu, Chennai and three others Vs. Mahalakshmi Cultural Association, rep.by its Secretary, Old No.30, New No.58, North Boag Road, T.Nagar, Chennai – 17.)



5.The order of this Court in Crl.O.P.No.(MD) No.6568 of 2020 dated 24.07.2020 (D.Siluvai Venance Vs. The Inspector of Police, Koodankulam Police Station, Tirunelveli)

and further relied upon the judgment of this Court in *Raman Nair and others V. State 1990(2) MWN(Cr)HC 195*, in which, the relevant para is as follows;

"7..... To decide a question whether a club, where gaming in cards is carried on, is a gaming house or not, the relevant consideration is not whether any member of the club makes a profit but whether the club, as a person, occupying or using or keeping the house or room makes a profit. The fact that the police recovered huge sum of money on the table on the date in question is not sufficient to throw any light as to the club or the Secretary of the club deriving anything from out of the money available on the table at the relevant time. The fact that the members playing cards make a profit is not at all a criterion to decide the question of the premises



WEB COPY



CrI.O.P.No.20064 of 2022

being used as a gaming house. The huge amount, available on the table at the relevant time, may be going to the pockets of the members playing the game of cards. As already indicated, that is not sufficient to consider the premises of the club a gaming house under Section 3 of the Act. Once the premises is not proved to be a gaming house, it goes without saying that the petitioners cannot be stated to have committed the offences under Sections 8 and 9 of the Act.

It has been repeatedly held that running of a common gaming house is a primordial requisite before a person could be convicted for offence under Sections 8 and 9 of the Act and gaming is not an offence per se. Even assuming that the allegations put forth by the prosecution is true, it cannot constitute an offence as alleged. 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”.

4.In all these judgments, unless and until a person further played game



CrI.O.P.No.20064 of 2022

in the gaming house, he should not be prosecuted for an offence. Therefore, without any evidence to show that the place of occurrence is a gaming house, the continuation of the criminal proceedings against the petitioner amounts to misuse of process of law. Therefore, he seeks to quash the proceedings.

5.The learned Additional Public Prosecutor submitted that admittedly the petitioner played rummy by using 53 cards at The Literary Society room, near palace theatre, Salem and from the place of occurrence, the respondent police seized a sum of Rs.2500/- and they arrested one person, four persons were escaped, subsequently, they were identified.

6.Considering the submission made on either side and on perusal of the records, it is seen that though the learned Additional Public Prosecutor submitted that the petitioner played cards at The Literary Society room, near palace theatre, Salem, he is not able to show the place of occurrence i.e. the Literary Society room, near palace theatre, Salem as a gaming house. In the absence of any evidence or proof to show that the petitioner is playing cards



CrI.O.P.No.20064 of 2022

in a gaming house, registering a case against the petitioner under Sections 8 & 9 of Tamil Nadu Gaming Act is unsustainable and continuing the prosecution would amount to misuse of process of law and is liable to be quashed. Accordingly, the FIR in crime No.101 of 2022 registered on 22.06.2022 for offences under Sections 8 & 9 of the Tamil Nadu Gaming Act is hereby quashed. Accordingly, the criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms

13.10.2022

To

1.The Sub Inspector of Police,
Salem Town Police Station,
Salem District.
Crime No.101 of 2022

2.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM, J.,

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