



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.7148 of 2022

WEB COPY

1.Suresh

2.Aswin

... Petitioners/Accused Nos.1 & 2

Vs.

1.The State,

Represented by the Sub-Inspector of Police,

Marthandam Police Station,

Kanyakumari District.

Crime No.538 of 2020. ... 1st Respondent/Complainant

2.P.Samuel

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with the charge sheet in S.T.C.No.343 of 2021 on the file of the learned Judicial Magistrate No.1, Kuzhithurai and quash the same as far as the petitioners are concerned.

For Petitioners

: Mr.R.Russel Raj

For R - 1

: Mr.B.Thanga Aravindh

Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.343 of 2021 on the file of the learned Judicial Magistrate No.1, Kuzhithurai, as against the petitioners.

2.There are totally five accused, in which, the petitioners are arraigned as Accused Nos.1 and 2. They have been charged for the offence under Section 12 of the Tamil Nadu Gambling Act with the allegation that on 25.04.2020, the petitioners and three others were found playing cards near an isolated place and therefore, they were arrested and recovered the cards with money to the tune of Rs.1,400/-.

3.The learned counsel appearing for the petitioner would submit that the first petitioner is working as a Driver in the State Express Transport Corporation and the second petitioner is an Engineer, working at a private company in Bangalore. Due to Covid-19 pandemic, the second petitioner went to his native place and met his friends in the Village. On 25.04.2020, he visited his friends and they chose to play cards in the place of occurrence. At that



juncture, the respondent Police suddenly entered into the occurrence place and apprehended the accused and registered the case. The place mentioned in the charge-sheet is neither a common area, as per Section 3 of the Act, nor it can be termed as a public street, place, as contemplated under Section 12 of the Act.

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4. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal Side) appearing for the first respondent and perused the materials available on record.

5. On a perusal of the materials available on record revealed that the first petitioner is working as a Driver under SETC and the second petitioner is an Engineer working at private company in Bangalore. On 25.04.2020, he visited his friends and they chose to play cards in the place of occurrence. At that juncture, the respondent Police suddenly entered into the occurrence place and apprehended the accused and registered the case. The place mentioned in the charge-sheet is neither a common area, as per Section 3 of the Act, nor it can be termed as a public street, place, as contemplated under Section 12 of the Act. In the Judgment of this Court in ***Crl.O.P(MD)No.6568 of 2020 in the case of D.Siluvai Venance Vs. State represented by, the Inspector of Police***, in which, this Court referred as follows:-

"13. Common gaming house, as per the definition from Section 3 of the Tamil Nadu Gambling Act, 1930, reads as follows:

"Common gaming house means any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other 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 or place, whether by way of charge for the use of the instrument of gaming or of the house, room, tent, enclosure, vehicle, vessel or place, or otherwise howsoever, and includes any house, room, tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming."

14. Section 12 of the Tamil Nadu Gaming Act is as follows:

"12. Penalty for Gaming in Public Street, etc., - 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.”

.....
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 putforth 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.”

This Court held that running of a common gaming house is a primordial requisite before a person could be convicted for the offences under Sections 8 and 9 of the Act and gaming is not offence per se. Even assuming that the allegations putforth by the prosecution is true, it cannot be constituted an offence as alleged by the prosecution.



6.That apart, there is absolutely no mention in the charge-sheet about anybody running a common gaming house. There is no mention about the petitioners permitting the use of the premises for gaming activities with a view to derive profit or gain for themselves. Even according to the prosecution, the petitioners were playing cards at Nattalam Malayan Vilai. The respondent police recovered a sum of Rs.1,400/- in the place in which the petitioners playing cards is not a common gaming house. Time and again, this Court repeatedly held 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.

7.In view of the above, the impugned proceedings in S.T.C.No.343 of 2021 on the file of the learned Judicial Magistrate No.1, Kuzhithurai, cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the same is quashed and the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (AD-I)

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/ /2022

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 Judicial Magistrate No.1,
Kuzhithurai.

2.The Sub-Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

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

Order made in
Cr1.O.P(MD)No.7148 of 2022
25.04.2022

SJ(CO)GC(23.05.2022) 4P 4C

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