



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.20655 of 2021

R.Balamurugan

... Petitioner/Accused No.8

Vs.

The State represented by
The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram District.
(In Crime No.25 of 2020)

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the case in S.T.C.No.37 of 2020 on the file of the District Munsif cum Judicial Magistrate, Kadaladi and quash the same.

For Petitioner : Mr.R.Venkateshwaran
For Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side)

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.

2. The petitioner is figuring as eighth accused in S.T.C.No.37 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Kadaladi . The case of the prosecution is that the petitioner along with others were found committing the act of gaming in a club.

3. The learned counsel appearing for the petitioner placed reliance on the decision of a learned Judge of this Court. It has been held vide order 24.07.2020 in Crl.O.P(MD)No.6568 of 2020 that in such a case, Section 8,9 and 10 of Tamil Nadu Gaming Act, 1930 will not be attracted as it cannot be called as common gaming house. The learned Judge in the said decision has held as follows:-

"16. As per the dictum laid down by this Court in **J. Raghunadhu v. Emperor**, reported in **1933 Mad WN 1422**, the



pial of a private house, which has access to the public street cannot be termed as a public place as contemplated under the Act.

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."

18. The Punjab and Haryana High Court, in **Kanwardeep Singh v. Union Territory of Chandigarh**, in **Crl.M.P.No.54959 of 2006, dated 24.12.2008**, has held as follows:

"...the premises, which was subjected to search and seizure under Section 5 of the Act, could not be termed as a common gaming house, and therefore, continuance of proceedings, as against the



petitioner, would be a clear abuse of the process of law and the abuse of process of court. There is no dispute to the fact that the incident is in immediate proximity in time to Diwali festival. Any and every case of playing cards, particularly during festive season, in private property not for the gain and profit of the occupier or owner of property cannot be termed as gambling in a common gaming house, under the Act, to constitute an offence. I am of the opinion, taking in view the facts and circumstances of the case, that it is a case of playing cards during Diwali festivities. The incident is neither in a public place nor in a common gaming house (as defined under the Act)."

19. The ratio laid down in the aforesaid decisions will squarely apply to the present case on hand....."

4. Respectfully following the aforesaid decision, I hold that Sections 8,9 and 10 of Tamil Nadu Gaming Act, 1930 are not attracted. Thus, looked at from any angle, the impugned prosecution against the petitioner is unwarranted. Therefore, the same is quashed. The criminal original petition is allowed. The benefit of this order will also enure in favour of the non petitioning accused.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

16/02/2022

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 District Munsif cum Judicial Magistrate,
Kadaladi.
- 2.The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram District.



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

+1 CC to M/s.R.VENKATESWARAN, Advocate (SR-4709[F] dated 08/02/2022)

Crl.O.P (MD) No.20655 of 2021

04.02.2022

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