



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.20788 of 2021

and

Crl.M.P. (MD)Nos.11886 & 11887 of 2021

WEB COPY

Musambin @ Mothimuzzamil

... Petitioner / Accused No.2

Vs

State rep. by
The Inspector of Police,
Seidunganallur Police Station,
Thoothukudi District.
(In Crime No.111 of 2021)

... Respondent/ Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the charge sheet in S.T.C.No.1198 of 2021 on the file of the learned Judicial Magistrate, Srivaikundam, Thoothukudi District and quash the same as illegal in respect of the petitioner.

For Petitioner : Mr.G.Anto Prince

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

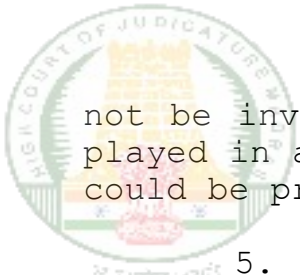
ORDER

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

2. The petitioner is figuring as A2 in S.T.C.No.1198 of 2021 on the file of the Judicial Magistrate, Srivaikundam.

3. The case of the prosecution is that on 30.05.2021 at about 12.00 hours, the petitioner along with the other accused were playing cards for stakes under a neem tree in a public place. In this regard, Crime No.111 of 2021 was registered and final report was filed and cognizance of the offences under Sections 188, 269 of IPC and Section 12 of Tamil Nadu Gaming Act, 1930, was taken. The respondents could not have straight away registered an FIR for an offence under Section 188 of IPC. This position was authoritatively laid down in ***Jeevanandham and others Vs. State 2018 2 Law Weekly Crl. 606.***

4. It is not the case of the prosecution is that the petitioner was suffering from any infectious disease or that he contributed to its spread. Therefore, Section 269 of IPC also could



not be invoked against the petitioner. Only if the petitioner had played in a common gaming house, Section 12 of Tamil Nadu Gaming Act could be pressed into service.

5. Thus, looked at from any angle, none of the ingredients of the offences have been made out against the petitioner. The impugned proceedings are quashed. This Criminal Original Petition is allowed. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

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, Srivaikundam, Thoothukudi District.
- 2.The Inspector of Police,
Seidunganallur Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-39[F] dated 03/01/2022)

Crl.O.P(MD)No.20788 of 2021
03.01.2022

RD(12.01.2022) 2P 5C