



Crl OP No.6366 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **06.04.2023**
PRONOUNCED ON : **13.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 6366 of 2021
and
Crl.M.P. Nos. 4241 & 4242 of 2021

1. Saminathan
 2. Palanisamy
 3. Sarangapani
 4. Kettimuthu
 5. Anbalagan
 6. Kathirvel
- ... Petitioners

Versus

The Inspector of Police,
Dharapuram Police Station,
Dharapuram, Tiruupur District,
Crime No.2/2016.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash the proceedings in S.T.C. No. 281 of 2016 on the file of the Judicial Magistrate, Dharapuram, Tiruppur District.

For Petitioners : Mr. K.V. Muthuvisakam.

For Respondent : Mr. A. Damodaran,
Additional Public Prosecutor.



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ORDER

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2.It is alleged in the final report that on 01.01.2016, at about 18.30 hrs, the petitioners were found gaming with cards in front of cosmopolitan club; and that cash of Rs.600/- and tokens besides a notebook were seized from the petitioners.

3.The learned counsel for the petitioners would submit that the petitioners are senior citizens aged above 65 years; that they are members of the cosmopolitan club; that there is no necessity for them to play cards in front of the cosmopolitan club; that in any event the offence under Section 12 of the Tamil Nadu Gaming Act, 1930 would be attracted only if they are found gaming with cards in any public street, place or thoroughfare etc., In the instant case, except for stating that they played cards in front of the club, there is nothing to indicate that it was in any public street, place or thoroughfare. In the absence of the said material, the petitioners cannot be made liable for the alleged offence under section 12 of the Tamil Nadu Gaming Act, 1930.



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4.The learned Additional Public Prosecutor appearing for the respondent would submit that the allegations in the impugned final report would attract the offence alleged and the points raised by the petitioners have to be adjudicated only before the trial court

5.This Court on perusal of the impugned final report finds that the petitioners are senior citizens. It is the prosecution case that they were found gaming with cards in front of the cosmopolitan club. The prosecution has not specifically stated that it was in a place where public had access which is an essential ingredient to attract the offence under Section 12 of the Tamil Nadu Gaming Act, 1930. This Court in the Judgment reported in **1950 M W N CR 93** in ***Kuchampudi Satyanarayana Raju Vs The State***, had held that for the purposes of Section 12 of the Tamil Nadu Gaming Act, 1930 it is not necessary that the place should be a public property but if it is a private property it must be proved that not only the public could have access to it, but it is a place to which members of the public in fact resort. The relevant observations of this Court is extracted for better understanding;



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“The principle deducible from all these decisions is that in order to constitute a public place within S.12 of the Gaming Act it is not necessary that the place should be a public property, but if it is a private property it must be proved that not only the public could have access to it, but it is a place to which members of the public in fact resort.”

6.This Court finds that there is no material in the impugned final report to show that the place where the petitioners are alleged to have indulged in gaming with cards is a public place. There is only a vague reference stating that it was in front of the cosmopolitan club. One cannot infer that it is a public place from such an allegation. Hence, the necessary ingredient to constitute the offence under Section 12 of the Tamil Nadu Gaming Act, 1930 that gaming has to be in a public street or a public place is not satisfied in the instant case. Hence, this Court is inclined to quash the final report. That apart, it is seen that the petitioners who are senior citizens, are the members of the cosmopolitan club and there was no necessity for them to play outside the club. Hence, this Court is inclined to quash the final report.



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WEB COPY 7. Accordingly, this Criminal Original Petition is allowed.

Consequently, the connected Miscellaneous Petitions are closed.

13.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
Dharapuram Police Station,
Dharapuram, Tiruppur District.
2. The Judicial Magistrate,
Dharapuram, Tiruppur District.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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Dated: 13.04.2023