



Crl.O.P No.18112 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.18112 of 2023

and

Crl.M.P.Nos.12023 & 12024 of 2023

- 1.Subramani
S/o.Veeraragavan
- 2.Ramesh
S/o.Nandhakumar
- 3.Munusamy
S/o.Ramachandran
- 4.Jamal
S/o.Musthafa
- 5.Vasu
S/o.Logu
- 6.Bala
S/o.Gopal
- 7.Nepoliyan
S/o.Chidambaram
- 8.Vellaisamy
S/o.Samykannu
- 9.Suresh
S/o.Rangan



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10.Soundarapandiyan
S/o.Thangamuthu

11.Nazeer Mohamed
S/o.Abdul Rahman

12.M.P.Rajkumar
S/o.Parasuramar

13.Nageshwara Rao
S/o.Raguramaiyah

14.Balaji
S/o.Govindasamy

15.Ramesh
S/o.Aathimoolam

... Petitioners

vs.

1.State represented by
The Inspector of Police,
R-8, Vadapalani Police Station,
T.Nagar, Chennai.
Crime No.369 of 2022

2.Magesh Kumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for records relating to C.C.No.1102 of 2023 on the file of Metropolitan Magistrate XVII, Saidapet, Chennai and quash the same.

For Petitioners : Mr. M.Mohamed Riyaz

For Respondents : Mr.A.Gopinath

Government Advocate [Crl.side] [R1]



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1102 of 2023 pending on the file of the Metropolitan Magistrate XVII, Saidapet, Chennai.

2. The case of the prosecution is that on 18.12.2022, the second respondent, based on a secret information went to a cultural centre located at Vadapalani, entered into the premises and made an inspection and found that the accused persons were playing cards with stakes. Accordingly, the First Information Report was registered in Crime No.369 of 2022 on the file of Vadapalani Police Station for offences u/s.45 and 46 of the Tamil Nadu City Police Act, 1888. On completion of investigation, the final report has been filed before the Court below.

3. Heard Mr.M.Mohamed Riyaz, learned counsel for petitioner and Mr.A.Gopinath, learned Government Advocate [Crl.side] appearing for first respondent.



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4. The issue involved in this petition is squarely covered by the earlier order passed by this Court in ***Naina Mohamed and others v. State [CDJ 2019 MHC 6121]***. The relevant portions are extracted hereunder:

5.The only issue that requires consideration of this Court is whether the gaming with cards by the accused persons inside the property belonging to A1, will attract the offence under Section 12 of the Tamilnadu Gaming Act. It will be relevant to take note of the judgments cited by the learned counsel for the petitioners. In the Judgment passed in M.James Arockia Samy Vs. The Inspector of Police, Aaravayal Police Station, Devakottai Taluk, Sivagangai District, this Court held as follows:

“7.In the case on hand, the place where the alleged occurrence is taken place, is not a common gaming house as defined under Section 3 of the Tamil Nadu Gaming Act, 1930. It is also relevant to consider Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930, which reads as follows :

“8.Penalty for opening etc., a common gaminghouse: whoever opens, keeps or uses or permits to be used any common gaming house or conducts or assists in conducting the business of any common gaming house or advances or furnishes money for gaming therein, shall be liable on conviction to fine not exceeding five hundred rupees, or to imprisonment not exceeding three months, or to both.

9.Penalty for being found gaming in a common gaming house:whoever is found gaming or present for the purpose of gaming in a common gaming house shall, on conviction,



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be liable to fine not exceeding two hundred rupees or to imprisonment not exceeding one month; and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.”

8.In this regard, the learned counsel for the petitioner has relied upon the Judgment reported in 1990(2) MWN Crime 195 in Raman Nair & 13 others & Durai Maharajan V.State, wherein, this Court has held 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, 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. 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 an offence per se.



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Even assuming that the allegations purforth 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 no 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 mentioned 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 cheetu' 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. Though the new VIP Club obtained orders to carry on lawful activities in the recreation club and petition to Superintendent of Police to direct the Inspector not to prohibit the running



of club, the respondent has thought fit to raid the Club. It is nothing but malicious prosecution and it has to be curtailed.”

9.In view of the above facts and circumstances of the case, this Court is of the considered opinion that the premises, which was subjected to search and seizure under Section 5 of the Gaming 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 process of law and the abuse of process of Court. Every case of playing cards, particularly during festive season, in private property not for the gain and profit of the occupier or owner of the property cannot be termed as gambling in a common gaming house, under the Act, to constitute an offence.”

6.In the Judgment passed in D.Kannan Vs. The Inspector of Police, Thirupuvanam Police Station, Thirupuvanam, Sivagangai District, this Court held as follows:

“5.The complainant in the case is the first respondent Inspector of Police. In the instant case the accused admittedly have been found gambling in the house belonging to the second accused. The present case is an instance of persons gambling over a card game and there is no accusation of the second accused using his house as a gaming house and towards reaping profit or gain by so doing.

6. The observation in the judgment of the Panjab - Haryana High Court in Kanwardeep Singh vs. Union Territory Chandigarh on 24 December, 2008 in Crl.M.P.No.54959 of 2006 are apposite: "In view of the facts and circumstances of the case, I am of the considered opinion that 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 Act). The facts and circumstances do not spell out commission of any offence under the Act."

7. In the case referred to, the incident had taken place during the Diwali festival. In the instant case, the incident had taken place during the Pongal festival."

5. In the instant case, the accused persons are said to have played cards inside a cultural centre. The search has been conducted without following the procedure u/s.42 of the Tamil Nadu City Police Act, 1888. That apart, the place where the cards were played cannot be held to be a gaming house, which is a prerequisite for proceeding under Sections 45 and 46 of the Tamil Nadu City Police Act, 1888.



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In the light of the above discussion, this Criminal Original Petition is allowed and the proceedings in C.C.No.1102 of 2023 pending on the file of the Metropolitan Magistrate XVII, Saidapet, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

23.08.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
gm

To

- 1.The Metropolitan Magistrate XVII,
Saidapet, Chennai.
- 2.The Inspector of Police,
R-8, Vadapalani Police Station,
T.Nagar, Chennai.
Crime No.369 of 2022
- 3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH., J

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