



Crl.O.P(MD).No.12445 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.12445 of 2020

and

Crl.M.P.(MD)Nos.5645 and 5647 of 2020

1.Chandrasekar
2.Ravi
3.Ramachandran
4.Vijayakumar
5.Lakshmanan
6.Syed Abdul Khadhar
7.Kondappan
8.Kathan

...Petitioners

Vs

1.The Sub Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.
(Crime No.333 of 2019)
2.Elangovan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the impugned charge sheet in S.T.C.No.20 of 2020 on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District and quash the same.

For Petitioners

: Mr.R.Suresh Kumar

For 1st Respondent

: Mr.M.Sakthi Kumar

Government Advocate



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ORDER

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This petition is filed to quash charge sheet in S.T.C.No.20 of 2020 on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District

2.According to the petitioners, they have been arrayed as accused in Crime No.333 of 2018 for the offence under Section 12 of Tamil Nadu Gaming Act. Thereafter, investigation was conducted by the first respondent and filed final report. Based on the final report, the learned Judicial Magistrate, Thirumangalam has taken cognizance in S.T.C.No.20 of 2010.

3The prosecution case is that on 10.07.2019, when the second respondent has accompanied with three police constables were in patrol duty, they found all the accused playing cards with stake behind Victoria Jubilee Union Club. On seeing police, all the petitioners tried to escape from the occurrence place. But they were caught by the police and they seized the money and cards and thereafter, FIR has been registered in Crime No.333 of 2019. After investigation, the first respondent filed final report and the learned Judicial Magistrate has taken cognizance in S.T.C.No.20 of 2020 and the same is pending. The alleged occurrence was not taken place in the public place as mentioned in Section 12 of the Tamil Nadu Gaming Act. Without conducting



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proper investigation, the respondent filed final report. Thereby, the pending charge sheet is liable to be quashed.

4.No counter was filed on the side of the respondents.

5.The learned counsel appearing for the petitioners would contend that these petitioners are innocents and they have not committed any offence under Section 12 of Tamil Nadu Gaming Act. A false case has been foisted against the petitioners. As per Section 12 of Tamil nadu Gaming Act, the occurrence has to be taken place in the public place. In the case on hand, there is no specific mention about public place. Only vague allegation that behind Victoria Jubilee Union Club, the occurrence was taken place. Therefore, the offence under Section 12 of Tamil Nadu Gaming Act would not attract. Thereby, the pending charge sheet is liable to be quashed.

6.The learned counsel appearing for the petitioners relied upon the following judgments:-

(i)*Saminathan and others v. The Inspector of Police in Crl.O.P.No.6366 of 2021;*

(ii)*S.Ravichandran v. The Inspector of Police in Crl.O.P.No.20181 of 2021;*

(iii)*Kalaiselvan and others v. State reported in 2018-2-L.W.(Crl.) 785;*



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(iv)*Jeevanandham and others v. State in Crl.O.P.(MD)No.1356 of 2018 reported in 2018-2-L.W.-(Crl.) 606.*

7.The learned Government Advocate appearing for the first respondent would contend that on the date of occurrence, all the petitioners have played cards with money (கெட்டு ஆட்டம்). Thereby, the respondent police who were on patrol, arrested the petitioners and seized money of Rs.18,000/- and cards and thereafter, registered FIR and after elaborate investigation, filed final report. Based on the final report, the learned Judicial Magistrate has taken cognizance and taken on file in S.T.C.No.20 of 2020. The petitioners have to face the trial and no any valid ground to quash the STC proceedings.

8.This Court heard both sides and perused the materials available on records.

9.On perusal of the records, it is observed that the respondent police have registered FIR in Crime No.333 of 2019 and thereafter, elaborate investigation, they filed final report. Based on the final report, the learned Judicial Magistrate taken cognizance in S.T.C.No.20 of 2020.

10.The main contention raised by the petitioners is that the place of



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occurrence has not been specifically mentioned by the respondent police and vaguely stated that behind Victoria Jubilee Union Club. In order to attract provision under Section 12 of Tamil Nadu Gaming Act, game has to be in public place or public street. In this case, the allegation is that behind Victoria Jubilee Union Club, there is no specific place mentioned by the respondents.

11.The learned counsel appearing for the petitioners relied upon the judgment of this Court in ***Saminathan and others v. The Inspector of Police*** in ***Crl.O.P.No.6366 of 2021***, wherein this Court in para no.6 held as follows:-

“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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12.The learned counsel appearing for the petitioners relied upon the judgment of this Court in ***S.Ravichandran v. The Inspector of Police*** in ***Crl.O.P.No.20181 of 2021***, wherein this Court in para nos.6 to 8 held as follows:-

“6. Even after filing the final report, quashment of FIR is maintainable. It is relevant to rely upon the judgment of this Court in the case of Pandiyarajan and Ors Vs. State and Ors reported in 2020 1 MLJ (cri) 578, in which the Madurai Bench of this Court 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 an 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



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gain for himself. Therefore, the place in which the petitioners played in vettu 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.?

(vi) In the case on hand, admittedly, the respondents recovered money on the table and it 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 point of time. The members playing cards making profit is not at all a criterion to decide the question of the premises being used as gaming house. Therefore, it is not sufficient to consider the premises of the club is a common gaming house as defined under Section 3 of the Act.

7. In the case on hand, there is absolutely no mention about anybody running common gaming cards and there is no mention about the petitioner permitting the use of the premises for gaming activities with a view to derive profit or gain for the club. Therefore, no offence is made out under Tamilnadu Gaming Act, 1930 as alleged by the respondent.”



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13.The learned counsel appearing for the petitioners relied upon the judgment of this Court in ***Kalaiselvan and others v. State rep. by The Inspector of Police*** reported in ***2018 2 L.W. (CRL.) 785***, wherein this Court in para nos.15 to 17 held as follows:-

“13.On a perusal of the Tamil Naging Act, 1930, it is seen that previously the Madras City Police Act is applicable only to the Chennai City. Admittedly, the occurrence took place in 17.08.2014 and as such, the date on which the occurrence took place, the Tamil Nadu Gaming Act, 1930 is not in force and it has been substituted by the Chennai City Police (Extension to the Cities to Salem, Tiruchirapalli and Tirunelveli) Act, 1997 came into force and is applicable for the offences said to have been committed by the petitioners. This court is of the view that filing of final report under the wrong provision of the Act cannot be sustained. Therefore, the charge sheet laid by the respondent under the wrong provisions of the Act and taking cognizance of the offences by the trial Court are not sustainable under law.....Considering the said decisions along with the facts of the present case, in the present case, the first respondent is the complainant as well as the investigation officer. The first respondent is personally biased and prejudiced and personally interested to get conviction to the petitioner, since already, the first petitioner approached this Court in W.P.(MD) No.17203 of 2014 and obtained order against the first respondent. Therefore, the entire investigation is vitiated.

16.In view of the same, this Court is of the view that the



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continuous of the prosecution as against the petitioners will be a futile exercise and it will be a waste of time and energy. As such, this criminal original petition deserves to be allowed by quashing the said proceedings as against the petitioners.”

14.The learned counsel appearing for the petitioners relied upon the judgment of this Court in ***Jeevanandham and others v. State rep. by The Inspector of Police*** reported in ***2018 2 L.W. (CRL.) 606***, wherein this Court in para no.32 held as follows:-

“ In all these cases, a Final Report has been filed for an offence under Section 143, 341 and 188 of IPC. A Final Report cannot be filed for an offence under Section 188 of IPC, and the Court below ought not to have been taken cognizance. In view of the above discussion, the Final Report insofar as an offence under Section 188 IPC is concerned is hereby quashed. Insofar as the offence under Section 143 IPC is concerned, the allegation is that the assembly had raised slogans demanding for the rights of the farmers, and expressed opposition not to establish a godown and this according to the Police was done, when there was a prohibitory order under Section 30(2) of the Police Act, 1861. In the considered view of this Court, this will not constitute an offence under Section 143 of IPC.

2.In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an



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16. In view of the aforesaid judgments and considering that there is no specific mention by the respondents about the public place, the pending S.T.C.No.20 of 2020 is liable to be quashed. Thereby, this Court is inclined to quash the proceedings in S.T.C.No.20 of 2020.

17. Accordingly this Criminal Original Petition is allowed. The charge sheet in S.T.C.No.20 of 2020 is hereby quashed. Consequently, connected miscellaneous petitions are closed.

11.09.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

1. The Judicial Magistrate, Thirumangalam, Madurai District.
2. The Sub Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

Mrn

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