



CrI.O.P.(MD)No.19105 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/11/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.OP (MD)No.19105 of 2023

and

CrI.MP (MD)No.15086 of 2023

Silambarasan : Petitioner/A12

Vs.

1.The State rep. by
The Inspector of Police,
Sakkottai Police Station,
Sivagangai District.
(In Crime No.244 of 2023) : R1/Complainant

2.Muthu,
Sub-Inspector of Police,
Sakkottai Police Station,
Sivagangai District. : R2/De-facto Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the FIR registered in Crime No.244 of 2023 on the file of the respondents police and to quash the same against the petitioner as illegal.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor



Crl.O.P.(MD)No.19105 of 2023

O R D E R

WEB COPY

This criminal original petition has been filed seeking quashment of the FIR in Crime No.244 of 2023 on the file of the respondents police.

2.The case of the prosecution is that the accused persons playing cards for profit inside the thope belongs to one Muruganandam and later, the police team went to the place and found six groups of people playing cards for profit. They have also recovered Rs.2960/-. Upon which, a case in Crime No.244 of 2023 was registered for the offence under sections 8 and 9 of Tamil Nadu Gaming Act, 1930.

3.Seeking quashment of the same, this petition has been filed this petitioner, who is arrayed as A12.

4.Heard both sides.

5.A short point, which arises for consideration is whether the offence under sections 8 and 9 of the Tamil Nadu Gaming Act are attracted to the present facts and circumstances of the case.



WEB COPY

6.The case of the prosecution, as mentioned above, is that the accused persons playing cards for profit inside the thope belongs to one Muruganandam and later, the police team went to the place and found six groups of people playing cards for profit. They have also received Rs.2960/-.

7.The learned counsel appearing for the petitioner by relying upon the unreported decisions of this court viz., ***M.Thirunavakkarasu and 5 others Vs. The Inspector of Police, Gandarvakkottai Police Station, Pudukottai District and another (Crl.OP(MD)No.5205 of 2021, dated 26/07/2021); and Mani and five others Vs. The State by the Sub Inspector of Police, Salem Town, Salem District (Crl.OP No.17317 of 2021, dated 01/09/2022)*** would submit that game took place in a private place belonging to A1. So it cannot be construed as 'common gaming house'.

8.Apart from that, it is also stated that they were playing cards as Vettucheettu (Black Jack); They also participated in the game; There is no allegation to the effect that A1 was allowing others to use the house as common gaming house.



9.In the light of the above said argument, let us go to the provisions.

10.Section 3 of the Act Tamil Nadu Gaming Act, 1930 defines '**common gaming house**', which reads as under:-

"3.Definition.-In this Act, unless there is anything repugnant in the subject or context,-

"common gaming-house" means any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel or place, whether by way of charge for the use of instruments of gaming or of the house, room, tent, enclosure, vehicle, vessel or place or otherwise howsoever; and includes any house, room, tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming;"gaming" does not



WEB COPY



CrI.O.P.(MD)No.19105 of 2023

*include a lottery, but includes
wagering or betting.*

*Explanation.-For the purposes
of this definition, wagering
or betting shall be deemed to
comprise the collection or
soliciting of bets, the
receipt or distribution of
winnings or prizes, in money
or otherwise, in respect of
any wager or bet, or any act
which is intended to aid or
facilitate wagering or betting
or such collection,
soliciting, receipt, or
distribution;*

*"instruments of gaming"
includes any article used or
intended to be used as a
subject or means of gaming,
any document used or intended
to be used as a register or
record or evidence of any
gaming, the proceeds of any
gaming, and any winnings or
prizes in money or otherwise,
distributed or intended to be
distributed in respect of any
gaming."*



WEB COPY

11. Section 4 of the Act imposes punishment upon the owner or occupier as the case may be, punishable upto two years. Similarly the person, who are found in such place also punishable upto one year or with both. There is a presumption clause is also present.

12. Section 3 deals about the objects put in the public street or any place to which the public have access.

13. Section 4(A) deals with presumption clause. Section 4 deals about the penalty for open or uses the common gaming house.

14. Section 9 deals the people, who are found playing cards in the common gaming house.

15. Reading of all those provisions in a combined manner, manifestly clear the position to the effect that had to attract the definition under section 3 of the Act, the house belongs to A1 was used for the purpose of inviting the public or friends as the case may be to play cards for profit. Since money has been recovered, *prima facie* indicate that they were playing the cards for profit. Since presumption clause is also available, it is a matter for trial to rebut the presumption.



WEB COPY

16.The first decision (***M.Thirunavakkarasu and 5 others Vs. The Inspector of Police, Gandarvakkottai Police Station, Pudukottai District and another (Crl.OP (MD)No.5205 of 2021, dated 26/07/2021)*** cited cited by the petitioner deals about the arrest and acquittal as the case may be. Here, neither arrest nor acquittal, but a private house belongs to A1 used for the purpose of playing the card for profit. So the above said decision will not apply to the facts and circumstances of the case.

17.Similarly, the second decision (***Mani and five others Vs. The State by the Sub Inspector of Police, Salem Town, Salem District (Crl.OP No.17317 of 2021, dated 01/09/2022)*** also deals about the association or Sangam called 'Maruthu Manamahilvu Sangam'. So, this does not also help the petitioner.

18.Now coming to the other aspect of playing cards, either for profit or where the owner of the house namely A1 gained any profit for money came to be played in that area are all the matters for consideration during the course of trial.



WEB COPY

19.For more clarity, we can extract the judgment of the Hon'ble Supreme court reported in the State of **Andhra Pradesh Vs. K.Satyanarayana (AIR 1968 SC 825)**. The relevant portion is extracted herein:-

"The game of rummy is not game entirely of chance like the 'three card game' held that rummy requires certain amount of skill because the fall of cards has to be memorised and the building up of rummy requires considerable skill in holding and discarding cards. It is mainly and preponderantly a game of skill. However, their Lordship observed as follows:-

"Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of rummy or any other game playing for stakes, the offence may be brought home."

Thus, if the club is involved in making a profit out of the game of rummy, then it is open to the respondents to take appropriate proceedings. As has been held in many decisions, the question whether the petitioner club is involved in recreational activities and games of pure skill is a pure question of fact and



WEB COPY



CrI.O.P.(MD)No.19105 of 2023

therefore, there cannot be a blanket order restraining the respondents from interfering with their activities (Manoranjitham Monamyil Manram Vs. State of Tamil Nadu (AIR 2005 Madras 261))."

20. So whether the card played by the petitioner is purely a game of skill or chance is also a matter for consideration by the trial court. Even temporarily using a particular place for the purpose of playing cards for making profit either for playing cards by the owner or occupier of the building or premises will attract the penal provision. So the ground that was made by the petitioner is not available to him. He has to face the trial process.

21. For all the reasons stated above, this criminal original petition is liable to be dismissed and it is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

08/11/2023

Index: Yes/No
Internet: Yes/No
er



Crl.O.P.(MD)No.19105 of 2023

To,

WEB COPY

- 1.The Inspector of Police,
Sakkottai Police Station,
Sivagangai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Cr1.O.P.(MD)No.19105 of 2023

G.ILANGO VAN, J

er

Cr1.OP (MD) No.19105 of 2023

08/11/2023