



CrI.O.P.(MD)No.5399 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|---------------|------------|
| Reserved On   | 21.11.2024 |
| Pronounced On | 05.12.2024 |

CORAM

**THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR**

**CrI.O.P.(MD)No.5399 of 2024**

**and**

**CrI.M.P.(MD)Nos.4207 and 4208 of 2024**

1.Veeramani  
2.C.Sivasubramani  
3.R.Manikandan

... Petitioners

Vs.

The State Rep. by  
The Inspector of Police,  
Pattiveeranpatti Police Station,  
Dindigul District.  
[Crime No.324 of 2020]

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C.No. 49 of 2020, on the file of the Judicial Magistrate Court, Nilakottai, and quash the same as against these petitioners.

For Petitioners : Mr.M.Ganesh

For Respondent : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor



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**ORDER**

**WEB COPY** The petitioners / A2, A6 and A7, who are facing trial in C.C.No.49 of 2020, on the file of the Judicial Magistrate Court, Nilakottai, for the offences under Sections 353 and 506(i) of I.P.C. and Section 12 of the Tamil Nadu Gaming Act, 1930 and Section 3 of the Epidemic Disease Act, have filed the present quash application.

2. The gist of the case is that on 16.05.2020 at about 07:00 p.m., when the de-facto complainant, the Sub-Inspector of Police, along with three Head Constables, was on routine patrol in the area. During their patrol, they received a tip-off that a group of individuals, namely, M.Satheeshkumar, M.Veeramani, S.Selvam, S.Ramesh Kannan, P.Manikandan, C.Sivasubramanian, R.Manikandan, and K.Shanmugam were engaged in gambling at a coconut grove owned by the said M.Satheeshkumar in Ayyampalayam.

2.1. On noticing the Police party, the accused allegedly threatened the Officers and obstructed them from performing their public duties. Hence, the Police apprehended the accused. During the search at the scene of occurrence, the Police seized cash amounting to Rs.26,590, 52 playing



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cards, and four two-wheelers. Subsequently, the Sub-Inspector of Police, L.W.9, took up the investigation, recorded statements from witnesses, and filed a charge sheet with evidence, listing L.W.1 to L.W.9 as witnesses. On 31.12.2020, the trial Court took cognizance of the case and issued summons to the accused. Thereafter, the present quash petition has been filed, challenging the continuation of the proceedings.

3. The learned counsel for the petitioners contends that the final report was filed by the respondent on 31.12.2020 before the Judicial Magistrate Court, Nilakottai, but the Magistrate took cognizance of the offence in a mechanical manner by merely affixing a rubber stamp on the report. The learned counsel further argues that this practice has been deprecated by the Courts in numerous cases, wherein it has been held that taking cognizance through a rubber stamp, without proper application of mind, is not acceptable in the eye of law. The learned counsel further submits that the Magistrate's order should reflect a thoughtful consideration of the charge sheet and the evidence presented and hence, the learned counsel for the petitioners contend that the case should be quashed on this ground alone.



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**3.1.** The learned counsel for the petitioners further argues that the prosecution has falsely portrayed the petitioners are being involved in gambling in a public place. However, the learned counsel points out that no independent public witnesses examined in support of this claim. The prosecution's eyewitnesses (L.W.1 to L.W.4) are all police personnel, and similarly, the witnesses to the seizure mahazar are also Police officers. The only exceptions are L.W.7 and L.W.8, who are witnesses for the observation mahazar and rough sketch. As such, the case is primarily based on Police testimonies, raising doubts about the credibility of the prosecution's case.

**3.2.** The learned counsel further submits that the petitioners and the other accused were not engaged in gambling but were in fact collecting rations from nearby shop owners to distribute Covid relief materials to the public. The Police, however, intervened in the distribution of the relief materials, which led to a verbal altercation between the petitioners and the Police. Following this altercation, the prosecution's case was registered. Therefore, the learned counsel submits that the case lacks merit and is based on questionable evidence.



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**3.3.** The learned counsel for the petitioners further submits that, for an offence under Section 353 of the Indian Penal Code (IPC), there must be an assault or the use of criminal force against a public servant, with the intention to prevent or deter the public servant from performing their duties. The learned counsel submits that in the present case, there is no evidence or material to show that the petitioners assaulted or used criminal force against the Police officers. Merely obstructing or verbally confronting the Police, without any physical force or intention to prevent them from performing their duties, is insufficient to constitute an offence under Section 353 I.P.C. Therefore, the learned counsel contends that this charge is not substantiated by the facts of the case.

**3.4.** The learned counsel for the petitioners further submits that Section 12 of the Tamil Nadu Gaming Act is not applicable in this case. The learned counsel argues that Section 12 of the said Act can only be invoked when the alleged gaming takes place in a public place, with a commercial motive or for profit. In the present case, the petitioners and other accused were reportedly engaged in the alleged gambling in a coconut grove, a private property belonging to the first accused. Since the act occurred on private land and was not for profit, the learned counsel



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contends that the elements required for an offence under Section 12 are absent, and thus, the charge under this Section is not applicable.

**3.5.** Similarly, the learned counsel submits that Section 3 of the Epidemic Diseases Act is also inapplicable. For an offence under Section 3 of the Act, the offender must have committed an offence under Section 188 of the I.P.C., which pertains to disobedience of orders promulgated by a public servant. However, to prosecute someone under Section 188 of the I.P.C., the procedure outlined in Section 195 of the Criminal Procedure Code (Cr.P.C.) must be followed, which requires a written complaint by the public servant. The learned counsel submits that in this case, no such written complaint was filed, and therefore, the procedural requirements were not met. Hence, the charge under Section 3 of the Epidemic Diseases Act is not legally maintainable.

**3.6.** The learned counsel for the petitioners further submits that, for an offence under Section 506(i) of the I.P.C. (criminal intimidation), mere threats are insufficient to sustain a prosecution. The law requires that the threat must be followed by an action or some overt act to give it a criminal character. In the present case, the learned counsel submits that



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there is no evidence or material to show that any action following the alleged threat. Without any such subsequent act, the charge under Section 506(i) I.P.C. cannot be substantiated.

3.7. The learned counsel also emphasizes that, based on the uncontroverted statements of the prosecution's witnesses, no case is made out against the petitioners. Moreover, the learned counsel submits that the procedural irregularities in the case, such as, the mechanical taking of cognizance, the lack of public witnesses, and failure to follow necessary legal procedures, cannot be cured or overlooked.

3.8. In light of these factors, the learned counsel contends that the continuation of the prosecution would amount to an abuse of the legal process. Therefore, the learned counsel for the petitioners prays that the proceedings in C.C.No.49 of 2020 pending before the Judicial Magistrate Court, Nilakottai, be quashed.

3.9. In support of his contention, the learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in the case of **Manik Taneja and another vs. State of Karnataka and another**



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reported in **2015 (7) SCC 423**. The learned counsel referred to the principle laid down in that case, wherein the Hon'ble Supreme Court emphasized that, to constitute an offence under Section 353 of the I.P.C. (obstructing a public servant in the discharge of their duty), the accused must have either assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from performing their duty.

**3.10.** The learned counsel for the petitioners submits that, in the present case, there is no evidence of either an assault or the use of criminal force against the Police officers. Therefore, the facts of the case do not satisfy the legal requirements for an offence under Section 353 I.P.C., and the charge based on this Section is not applicable.

**3.11.** The learned counsel for the petitioners further relied upon the judgment of this Court in the case of **D.Siluvai Venance vs. State, Rep. by the Inspector of Police** reported in **2020 (2) LW (Cri) 650 : 2020 SCC Online Mad 1546**,. In that case, this Court referred to several judgments of the Hon'ble Supreme Court and other Courts, and held that playing cards in a private property, where the activity is not for personal



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gain or profit, and where the property is not used as a common gaming house, cannot be categorized as "gambling" under Section 12 of the Tamil Nadu Gaming Act.

**3.12.** The learned counsel submits that the present case is similar, as the alleged gambling took place in a private coconut grove owned by the first accused, and there was no commercial motive or profit involved. Therefore, the learned counsel contends that the activity cannot be considered as gambling in a common gaming house, and the charge under Section 12 of the Tamil Nadu Gaming Act is not applicable in this case.

**3.13.** The learned counsel for the petitioners further referred to the order passed by this Court in **CrI.O.P.No.23375 of 2021**, dated **17.03.2023** [**G.Karthick and another vs. The State, Rep. by the Inspector of Police, Arachalur Police Station, Erode District**], wherein this Court reiterated the principle that an activity carried out on private land, which is not for profit, cannot be classified as taking place in a "public place" under Section 12 of the Tamil Nadu Gaming Act. In that case, this Court emphasized that the mere fact that an activity takes place in a private location does not transform it into a public place for the



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purposes of the Gaming Act, especially when there is no commercial gain involved. The learned counsel argues that this ruling is directly applicable to the present case, where the alleged gambling occurred in a private coconut grove belonging to the first accused, and no profit motive was involved. Therefore, the charge under Section 12 of the Tamil Nadu Gaming Act cannot stand.

**3.14.** The learned counsel for the petitioners also referred to the order passed by this Court in the case of **Jeevanandham and others vs. State and others** reported in **2018 (2) LW (Cri) 606**, wherein this Court held that Section 195(1)(a)(i) of the Cr.P.C. bars the Court from taking cognizance of any offence punishable under Section 188 of the I.P.C. (disobedience of an order duly promulgated by a public servant), unless there is a written complaint by the public servant who issued the order, or the person whose lawful order has been disobeyed. In that case, the Court clarified that for prosecution under Section 188 I.P.C., it is a mandatory requirement that the public servant who issued the order must file a written complaint as per the procedure outlined in Section 195 Cr.P.C.



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**3.15.** The learned counsel for the petitioners points out that in the present case, no such written complaint was filed, nor was the procedure under Section 195 Cr.P.C. followed. Therefore, the charge under Section 3 of the Epidemic Diseases Act, which relies on Section 188 of I.P.C., is invalid and cannot be sustained.

**4.**The learned Additional Public Prosecutor submitted that on 16.05.2020, the de-facto complainant, along with his team, was on patrol duty when they received information about gambling activities. The team proceeded to a coconut grove in Ayyampalayam, where they found the petitioner and seven others sitting and playing cards for cash. Upon their arrival, the group resisted, abused, and obstructed the officers. The patrol team seized Rs.26,590/- in cash, 52 playing cards, and four two-wheelers from the scene of occurrence. This occurred during the COVID-19 pandemic, a time when there were restrictions on gatherings, and people were advised to stay indoors to prevent the spread of the virus. The petitioners were arrested, and the seized properties were produced before the Magistrate. After completing the investigation, the Police filed a charge sheet, listing witnesses and materials, and the trial Court, having applied its mind, took cognizance of the offence. The learned counsel for



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the petitioners contends that the issues raised are factual in nature and should be decided at the trial, not in the quash petition.

5. Considering the above submissions and on perusal of the materials, it is apparent that the prosecution's case is that the petitioners and other accused, who are friends of the first accused, were sitting and playing cards in the coconut grove. It is also stated that the activity was not for profit or gain, nor was it in a public place, which would exclude it from being categorized under gaming activities. Furthermore, it is unclear whether any regulation or order was imposed under Section 188 of the I.P.C. on the day of the occurrence. To charge a person under the Epidemic Diseases Act, it must be shown that an order was passed under Section 188 of the I.P.C., and only those disobeying such an order can be prosecuted.

6. This Court in the case of **Jeevanandham and others** [cited supra] clearly outlined the procedure for prosecuting a person under Section 188 of the I.P.C. Further, the informant in this case is a Sub-Inspector of Police, who is below the rank of a Deputy Superintendent of Police, and no Police Officer below the rank of Sub-Inspector of Police



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can enter a gaming house without the warrant of the Deputy Superintendent of Police. There is also no evidence to show that public servants were assaulted or that the petitioners used criminal force to prevent or deter the Officers from discharging their duties.

7. Therefore, on applying the test of whether the uncontroverted allegations *prima facie* establish an offence as per the guidelines enumerated in the case of **State of Haryana and others vs. Ch.Bhajan Lal and others**, reported in **1992 SCC (Cri) 426**, the conclusion is that no case is made out against the petitioners. Further, no useful purpose will be served by allowing the criminal prosecution to continue and it would be abuse of process of law. Hence, this Court is inclined to quash the proceedings pending against the petitioners in C.C.No.49 of 2020, on the file of the Judicial Magistrate Court, Nilakottai. Accordingly, the proceedings are hereby quashed not only against the petitioners but also against all the other accused, who are similarly placed in the case and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No  
Neutral Citation: Yes / No  
Speaking Order / Non-Speaking Order  
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**05.12.2024**



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To

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- 1.The Judicial Magistrate,  
Nilakottai.
- 2.The Inspector of Police,  
Pattiveeranpatti Police Station,  
Dindigul District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**M.NIRMAL KUMAR, J.**

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Pre-delivery order in  
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