



Crl.O.P.(MD)No.18050 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.10.2024

Pronounced on : 22.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.18050 of 2024

and

Crl.M.P.(MD)No.11169 of 2024

1.Muthukrishnan

2.Manikkam

3.Kumar

... Petitioners

Vs.

State rep. by
The Inspector of Police,
Arimalam Police Station,
Thirumayam Taluk,
Pudukkottai District.

... Respondent

Prayer : This Criminal Original Petition filed under Section 528 B.N.S.S., to call for the records of the impugned FIR in Crime No.88 of 2024 dated 14.08.2024 pending on the file of the Inspector of Police, Arimalam Police Station, Thirumayam Taluk, Pudhukottai District and quash the same.



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For Petitioners : Mr.M.K.Sachin Rahul
for M/s.C.Arulvadivel Associates

For Respondent : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to call for the records pertaining to the FIR in Crime No.88 of 2024 dated 14.08.2024 pending on the file of the Inspector of Police, Arimalam Police Station, Thirumayam Taluk, Pudhukottai District and quash the same.

2. The petitioners are the accused 1 to 3 in Crime No.88 of 2024 for the alleged offences under Sections 8 and 9 of the Tamil Nadu Gaming and Police Laws Act 1930 (Amendment 2021).

3. The case of the prosecution is that on 14.08.2024, when the respondent police were on patrol duty in the areas of Ettam Mandakapadi, Meenakshipuram and Santhaipettai, they received a confidential information about gambling activities taking place at Evergreen



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Recreation Club located behind Perumal Temple in Arimalam Santhaipettai and that the respondent police, after informing to the jurisdictional Magistrate, conducted search in the Evergreen Recreation Club and during the search, the petitioners were found with gambling articles and seized various gambling materials and on that basis, FIR came to be registered.

4. In the FIR, the respondent has listed out the following seized articles from the Evergreen Recreation Club,

1. HI FOCUS (HF 1007204807499) HD – XVR – 01
2. Evergreen Recreation Club General Body Register-01
3. Evergreen Special Resolution Register-01
4. Evergreen Items Inventory Register-01
5. Evergreen Disciplinary Action Register-01
6. Evergreen Executive Committee Register-01
7. Files
8. Evergreen Income and Expenditure Register
9. Token Box-02
10. Mini Writing Pad-06



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- 11.Bundle of papers used for card games-06
12. Small notes with numbers written on them-08
13. Cash : Rs.55,335.50
14. Card packets : 1080

5. The case of the petitioners is that Evergreen Recreation Club is a registered club under the provisions of the Tamil Nadu Societies Registration Act, 1975 with Registration No.196 of 1994, that the first petitioner is the Secretary of the Evergreen Recreation Club, that all the account books of the Evergreen Recreation Club is maintained properly by the administrators of the Evergreen Recreation Club, that the Evergreen Recreation Club was established to enhance the general knowledge of the members and the public by providing resources such as books, newspapers and magazines and also to engage the members in sports and physical exercises and indoor games such as chess, carom, etc., and that the members of the club used to play card games without the involvement of money and club never allows its members to engage in any act of gambling.



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6. It is the specific contention of the petitioners that since the respondent police had been continuously disturbing and interfering with the peaceful functioning of the club, the petitioners' club was forced to file a writ petition in W.P.(MD)No.16914 of 2021 forbearing the respondent police from entering into the club frequently or interfering or disturbing in the peaceful and smooth daily routine functioning and that when the writ petition was taken up for hearing, the learned Government Advocate (Criminal Side) submitted that the police had just advised the club to fix CCTV camera, recording the same, the writ petition was ordered to be closed vide order dated 23.03.2022.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that on receipt of credible information that gambling activities were going on in the Evergreen Recreation Club, search was conducted after sending pre-intimation to the jurisdictional Court and the petitioners were found with gambling articles and after seizing the gambling materials and other articles, FIR came to be registered.



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8. The learned counsel appearing for the petitioners would contend that members of the Evergreen Recreation Club are entitled to carry on their lawful activities within their premises and there should not be any interference from the police authorities so long as their activities are not in violation of the provisions of the Tamil Nadu Gaming Act, 1930, that the Evergreen Recreation Club, which is a registered club, will not fall under the category of common gaming house to attract Sections 8 and 9 of the Tamil Nadu Gaming Act, that the club does not collect any money for gaming or promotes gaming activities for the motive of collecting money for gains or profits, that just because cards are recovered from the Evergreen Recreation club does not enough to say that the act of gambling has occurred in the gaming house, that all the records seized in the club is nothing but the usual records that every registered society maintains and that there is no record to say that the money recovered from the office is kept as a reward or as a price money for any of the winners of any game played in the club and having the sum of Rs.55,000/- in the office of the club is very normal and that should not be roped as if this money is used for gaming purpose.



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9. The learned counsel appearing for the petitioners would rely on the decisions of this Court in the case of ***Peer Appa Vs. State, rep. by the Inspector of Police, Tenkasi*** reported in ***2006 (2) MWN (Cr.) 461*** and the case in ***V.Shanmugam Vs. The Sub Inpsector of Police, Mudaliarpet Police Station*** passed in ***Crl.O.P.No.11441 of 2017 dated 21.07.2017*** and in both the decisions, an earlier decision of the Madras High Court reported in ***1990 (2) MWN (Cr.) 195 (Raman Nair and Durai Maharajan Vs. State)*** was relied and the relevant passages are extracted hereunder:-

“5.

“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



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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.

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 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.”

10. The above decision is squarely applicable to the case on hand. In the present case also, there is absolutely no whisper in the FIR about anybody running a common gaming house. It is not the case of the prosecution that the first petitioner being the Secretary of the Club has been permitting the use of the premises for gaming activities with a view to derive profit or gain.



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11. In the case of ***Veerabathran and others Vs. State*** reported in ***2018 SCC OnLine Mad 6701***, it has been observed that time and again, the High 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 but 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.

12. Considering the above, as rightly contended by the learned counsel appearing for the petitioners, Evergreen Recreation Club, by no stretch of imagination, can be considered as a common gaming house and as such, the prosecution as against the petitioners cannot legally be sustained.

13. As rightly observed by the learned Judge in ***V.Shanmugam's*** case above referred, permitting the FIR to continue on record and directing the petitioner to undergo the ordeal of trial would not only be futile, but



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would also be an abuse of process of law. Hence, this Court has no hesitation to hold that the impugned FIR cannot legally be sustained and the same is liable to be quashed.

14. In the result, this Criminal Original Petition stands allowed and the proceedings in FIR No.88 of 2024 pending on the file of the respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

22.11.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The Inspector of Police,
Arimalam Police Station,
Thirumayam Thaluk,
Pudukkottai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
Crl.O.P.(MD)No.18050 of 2024
and
Crl.M.P.(MD)No.11169 of 2024

Dated : 22.11.2024