



Crl.O.P.No. 13154 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.13154 of 2025 and
Crl.M.P.Nos.8716 and 8718 of 2025

Everest Fleet Private Limited,
Represented by its Director,
Mr.Siddharth Ladsariya, M/41 yrs,
Having its office at
Plot No.31, Lisa Ponnammal Street,
2nd Floor, Golden George Nagar,
Nerkundram, Chennai 600 107.

... Petitioner

Vs.

Tamil Nadu Online Gaming Authority,
Represented by its Secretary, E.Sriganesh,
Having its office at
1st Floor, Urban Administrative Building,
75, MRC Nagar, Raja Annamalai Puram,
Chennai 600 028.

..Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for records pertaining to C.C.No.2269 of 2024, on the file of learned XXIII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.



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For Petitioner : Mr.N.R.Ramesh Kanna

For Respondent : Mr.A.Gopinath,
Government Advocate (crl.side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C. No. 2269 of 2024 pending on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

2. The case of the prosecution is that the petitioner's fleet of cabs carried advertisements promoting online gambling service, thereby encouraging the public to participate in such activities. Therefore, the respondent herein has filed a private complaint against the petitioner invoking Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), alleging contravention of Section 8 of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022. The offence is stated to be punishable under Section 16(2) of the said Act.



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3. The learned counsel appearing for the petitioner submitted that before taking cognizance of the complaint, the learned Magistrate ought to have issued notice to the petitioner and complied with the procedure mandated under Section 223 of the BNSS. The learned counsel emphasized that the Magistrate cannot take cognizance without giving an opportunity of hearing to the accused, as stipulated in the first proviso to Section 223(1) of BNSS. The relevant provision is extracted hereunder:

“223. Examination of complainant.

(1)A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses,

and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in



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the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

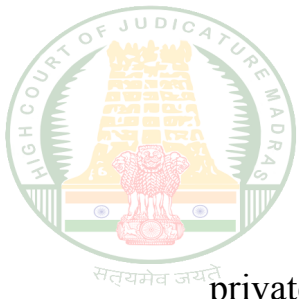
(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.”

5. Heard both sides and perused the materials placed before this Court.

5. On perusal of records, it is seen that the respondent has filed a

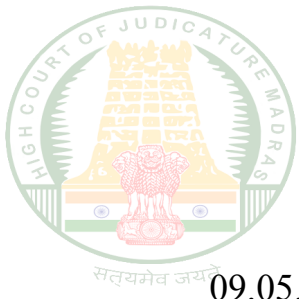


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private complaint before the learned XXIII Metropolitan Magistrate, Saidapet, for the alleged contravention of Section 8 of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022, which is punishable under Section 16(2) of the same Act. It is evident from the records that the learned Magistrate has taken cognizance of the complaint without giving an opportunity of hearing to the petitioner, which is in violation of the mandatory requirement under the first proviso to Section 223(1) of the BNSS. The said provision clearly mandates that *no cognizance shall be taken by the Magistrate without giving the accused an opportunity of being heard*. Therefore, this Court is of the considered view that the cognizance taken by the learned Magistrate, without affording an opportunity of hearing to the petitioner, is not sustainable in law and is liable to be quashed.

6. Accordingly, the order taking cognizance in C.C. No. 2269 of 2024 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai is hereby quashed. The learned Magistrate is directed to conduct an enquiry by affording an opportunity of hearing to the petitioner on



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09.05.2025 and pass appropriate orders on the question of taking cognizance, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that in the event the petitioner fails to appear before the Trial Court on 09.05.2025, the Trial Court shall proceed to issue summons and continue the proceedings in accordance with law.

7. In the result, this Criminal Original Petition stands allowed on the above terms. Consequently, connected miscellaneous petition are closed.

28.04.2025

Neutral citation : Yes/No
Speaking/non-speaking order
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Note: Issue order copy on 07.05.2025

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1. The XXIII Metropolitan Magistrate Court, Saidapet, Chennai

2. Tamil Nadu Online Gaming Authority,
Represented by its Secretary, E.Sriganesh,
Having its office at
1st Floor, Urban Administrative Building,
75, MRC Nagar, Raja Annamalai Puram,
Chennai 600 028.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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