

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.07.2020

Pronounced on : 24.07.2020

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.OP.(MD)No.6568 of 2020

and

Cr1.MP.(MD)No.3340 of 2020

D.Siluvai Venance
(Wrongly mentioned as Permons)

... Petitioner / 5th accused

Vs.

State rep. by
The Inspector of Police,
Koodankulam Police Station,
Tirunelveli.

... Respondent

Prayer: Petition filed under Article 482 of the Criminal Procedure Code to call for the records in Crime No.175 of 2020, on the file of the Koodankulam Police Station, Tirunelveli and quash the same, insofar as the petitioner is concerned.

For Petitioner : Mr.L.P.Maurya

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

O R D E R

The petitioner, a Secondary Grade Teacher working in a Government Higher Secondary School, has been slapped with a First Information Report in Crime No.175 of 2020, on the file of the Koodankulam Police Station, Tirunelveli District. The petitioner, who is arrayed as fifth accused in the aforesaid crime number, filed this petition to quash the proceedings pending against him.

2. The case in Crime No.175 of 2020 was registered by the respondent Police on the complaint of the Sub-Inspector of Police, Koodankulam Police Station, as against this petitioner and four others for the offence under Section 12 of the Tamil Nadu Gaming Act, 1930 (hereinafter referred to as 'the Act'). The case of the prosecution is that the complainant, on his rounds along with two other Constables on 05.06.2020, around 06.30 pm, near Kaduthula Junction, found the petitioner and four others playing cards near a thorny bush and therefore, he arrested the accused, recovered the cards and money and registered the case for the offence under Section 12 of the Act.

3. The case of the petitioner is that since the Schools have been closed, due to the present COVID-19 pandemic, he went to his native village and met his friends in the village. On 05.06.2020, he visited the farm land of his friend near Kaduthula Junction in Vijayapathi Panchayat and since all the friends meet after a long time, they chose to play cards in the said farm land. The petitioner did not participate in the game, but was a mute spectator and around 07.30 pm, the respondent Police suddenly entered into the farm land and apprehended the petitioner and his friends and registered the case.

4. Mr.L.P.Maurya, learned Counsel for the petitioner would contend that the place mentioned in the First Information Report is neither a common area, as per Section 3 of the Act, nor it can be termed as a public street, place, as contemplated under Section 12 of the Act, however, the respondent Police has registered the case as against this petitioner and others.

5. The learned Counsel for the petitioner would further submit that in order to attract the offence under Section 12 of the Act, the alleged offence ought to have been committed in a public place. But, admittedly, even according to the respondent Police, it was near a thorny bush, the petitioner and others played the cards. The premises, in which the search and seizure was made, is a farm land of the petitioner's friend in Vijayapathi Panchayat and the same cannot be brought within the purview of Section 12 of the Act. Moreover, the petitioner is only a mute spectator, accompanied his friends at the time of occurrence and he has also been unnecessarily arrested and roped-in as an accused.

6. In support of his contention, the learned Counsel has relied upon the following decisions of this Court:

i) Naina Mohamed and others v. Inspector of Police, Keelakarai Police Station, Ramanathapuram District and another, in CrI.OP.(MD)No.7087 of 2017, dated 25.10.2019.

ii) M.James Arockia Samy v. The Inspector of Police,

Aaravayal Police Station, Devakottai Taluk, Sivagangai District, in Crl.OP.(MD)No.11917 of 2015, dated 22.10.2018.

iii) D.Kannan v. The Inspector of Police, Thirupuvanam, Sivagangai District, in Crl.OP.(MD)No.1573 of 2015, dated 04.02.2015.

7. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor submits that the accused persons were playing cards with stakes and there is a legal presumption under Section 6 of the Act that the persons found gaming with cards in any place are presumed to be playing in a common gaming house. Moreover, the case is only at the stage of FIR and the petitioner and others were arrested by the respondent Police along with cards and money. Therefore, it is not proper to interfere with the investigation at this stage and prays for dismissal.

8. Heard Mr.L.P.Maurya, learned Counsel appearing for the petitioner / 5th accused and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent / State.

9. This Court, while entertaining this application, has raised a query to the respondent Police that when the respondent Police are very particular in implementing the Tamil Nadu Gaming Act by registering a case even if a person is playing cards near a thorny bush, how online rummy is permitted in the State of Tamil Nadu. Not only in the State of Tamil Nadu, but also in the entire Country, such online games, viz., RummyPassion, Nazara, LeoVegas, Spartan Poker, Ace2Three, PokerDangal, Pocket52, My11Circle, Genesis Casino, etc., are mushrooming and there are so many advertisements appearing in almost all the social media and websites. It appears these advertisements are mostly targeting the unemployed youth, inducing them to play such games, on the pretext of earning money comfortably from their home.

10. In response to the query posed by this Court, the Assistant Inspector General of Police, Law and Order, filed a status report on behalf of the Director General of Police, Tamil Nadu, that there was a growing addiction for

online gaming/gambling, particularly among the youngsters causing financial crisis in families. Online gaming companies in India are now required to comply with multiple laws of India, both Central and State, but, most of them are not complying with techno-legal requirements of different laws of India.

11. The status report further reads that the online rummy cannot be considered as a game of skill as betting or gambling taking place in online rummy. The Assistant Inspector General of Police admitted that at present, in the State of Tamil Nadu, there is no rule to regulate and license online skill games such as rummy, bridge, nap, poker and fantasy sports, etc. However, the Government of Telangana through Act No.29 of 2017 has amended the Telangana Gaming Act, 1974, by inserting instruments of gaming which include any document, electronic form of record, digital form of record and that the Government of Telangana has also made new amendments to the said Act with regard to cyber space and online gaming for money.

12. This Court has paid it's anxious consideration to the rival submissions and also to the materials placed on record.

13. Common gaming house, as per the definition from Section 3 of the Tamil Nadu Gambling Act, 1930, reads as follows:

"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 the instrument 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."

14. Section 12 of the Tamil Nadu Gaming Act is as follows:

"12. Penalty for Gaming in Public Street, etc., -
Whoever is found gaming with cards, dice, counters,

money or other instruments of gaming in any public street, place or thoroughfare or publicly fighting cocks, shall be liable on conviction to fine not exceeding one hundred rupees or to imprisonment not exceeding three months and such instruments of gaming and moneys shall be forfeited."

15. According to the petitioner, it was only in his friend's farm land, his friends were playing cards and he was a only a mute spectator. Even according to the prosecution, the place of occurrence is near a thorny bush.

16. As per the dictum laid down by this Court in **J.Raghunadhu v. Emperor**, reported in 1933 Mad WN 1422, the pial of a private house, which has access to the public street cannot be termed as a public place as contemplated under the Act.

17. This Court, in **Raman Nair and others v. State**, reported in 1990 (2) MWN Crime 195, has 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 offence per se. Even assuming that the allegations put forth 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 gain for himself. Therefore, the place in which the petitioners played in 'vetty chettu' 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."

18. The Punjab and Haryana High Court, in **Kanwardeep Singh v. Union Territory of Chandigarh**, in **Cr1.M.P.No.54959 of 2006, dated 24.12.2008**, has held as follows:

"...the premises, which was subjected to search and seizure under Section 5 of the Act, could not be termed as a common gaming house, and therefore, continuance of proceedings, as against the petitioner, would be a clear abuse of the process of law and the abuse of process of court. There is no dispute to the fact that the incident is in immediate proximity in time to Diwali festival. Any and every case of playing cards, particularly during festive season, in private property not for the gain and profit of the occupier or owner of property cannot be termed as gambling in a common gaming house, under the Act, to constitute an offence. I am of the opinion, taking in view the facts and circumstances of the case, that it is a case of playing cards during Diwali festivities. The incident is neither in a public place nor in a common gaming house (as defined under the Act)."

19. The ratio laid down in the aforesaid decisions will squarely apply to the present case on hand. The place at which the gaming had taken place, even according to the respondent Police, is near a thorny bush, cannot be termed as a common gaming house. As the continuation of the investigation in this case will amount to abuse of process of law, this Court is inclined to interfere with the proceedings.

20. Accordingly, the proceedings pending against the petitioner / fifth accused in Crime No.175 of 2020, on the file of the Koodankulam Police Station are quashed.

21. Though the issue in the present case on hand is pertaining to playing of cards in a private place, since in the status report filed by the Assistant Inspector General of Police on behalf of the Director General of Police, it has been stated that at present, there is no rule to regulate and license such online skill games, based on a query posed by this Court while admitting this petition, this Court is inclined to discuss the issue in detail.

22. The gaming industry in India is undergoing a dramatic transition, not only in terms of its audience, but also in terms of the modes of participation and engagement. Gambling Laws in India prohibit betting or wagering and any act which is intended to aid or facilitate the same. For the purpose of regulating gaming in India, most of the Indian legislations differentiate between "games of skill" and "games of chance". Gaming / Gambling, being a State Subject, India has laws which differ from State to State. Therefore, what is permitted in one State, may be an offence in another.

23. The Public Gaming Act, 1867, is the Central Act in this subject, which has been adopted by several State Governments and the remainders have enacted their own legislation to regulate gaming / gambling, within its territory. It is to be noted at this juncture that such State legislations have been enacted prior to the advent of virtual / online gambling in India, except the State of Sikkim, Nagaland and Telangana, which have introduced regulations pertaining to online gaming also.

24. There has been a substantial discussion by the Hon'ble Supreme Court as well as by the High Courts around the Country as to what constitutes a "game of skill" and a "game of chance" and it has been held that where there is substantial degree of preponderance of skill over chance, it is a "game of skill" and vice versa. To be precise, a game of skill is one which involves application of mind, technique and experience by the player, which may include studying the rules, creating strategies, etc. Therefore, this Court feels it appropriate to have a look at the march of decisions rendered by the Hon'ble Supreme Court as well as the various High Courts in this regard.

25. As early as in the year 1957, a Constitution Bench of the Hon'ble Supreme Court in the case of **State of Bombay v. R.M.D.Chamarbagwala**, reported in **AIR 1957 SC 699**, has elaborately discussed this subject as follows:

"37. From ancient times seers and law givers of India looked upon gambling as a sinful and pernicious vice and deprecated its practice. Hymn XXXIV of the Rigveda proclaims the demerit of gambling. Verses 7, 10

and 13 say:

"7. Dice verily are armed with goads and driving hooks, deceiving and tormenting, causing grievous woe. They give frail gifts and then destroy the man who wins, thickly anointed with the player's fairest good.

10. The gambler's wife is left forlorn and wretched: the mother mourns the son who wanders homeless. In constant fear, in debt, and seeking riches, he goes by night unto the home of others.

11. Play not with dice: no, cultivate thy corn-land. Enjoy the gain, and deem that wealth sufficient. There are thy cattle, there thy wife, O gambler. So this good Savitar himself hath told me."

The Mahabharata deprecates gambling by depicting the woeful conditions of the Pandavas who had gambled away their kingdom. Manus forbade gambling altogether. Verse 221 advises the king to exclude from his realm gambling and betting, for those two vices cause the destruction of the kingdom of princes. Verse 224 enjoins upon the king the duty to corporally punish all those persons who either gamble or bet or provide an opportunity for it. Verse 225 calls upon the king to instantly banish all gamblers from his town. In verse 226 the gamblers are described as secret thieves who constantly harass the good subjects by their forbidden practices. Verse 227 calls gambling a vice causing great enmity and advises wise men not to practice it even for amusement. The concluding verse 228 provides that on every man who addicts himself to that vice either secretly or openly the king may inflict punishment according to his discretion. While Manus condemned

gambling outright, Yajnavalkya sought to bring it under State control but he too in verse 202(2) provided that persons gambling with false dice or other instruments should be branded and punished by the king. Kautilya also advocated State control of gambling and, as a practical person that he was, was not averse to the State earning some revenue therefrom. Vrihaspati dealing with gambling in Chapter XXVI, Verse 199, recognises that gambling had been totally prohibited by Manu because it destroyed truth, honesty and wealth, while other law givers permitted it when conducted under the control of the State so as to allow the king a share of every stake. Such was the notion of Hindu law givers regarding the vice of gambling. Hamilton in his Hedaya Vol. IV, book XLIV, includes gambling as a kiraheeat or abomination. He says: "It is an abomination to play at chess, dice or any other game; for if anything is staked it is gambling, which is expressly prohibited in the Koran; or if, on the other hand, nothing be hazarded it is useless and vain". The wagering contracts of the type which formed the subject-matter of the case of *Ramloll v. Soojumnull* [(1848) 4 MIA 339] and was upheld by the Privy Council as not repugnant to the English common law were subsequently prohibited by Act 21 of 1948 which was enacted on the suggestion of Lord Campbell made in that case and introduced in India provisions similar to those of the English Gaming Act (8 & 9 Vict. c. 109). Bengal Gambling Act (Ben 2 of 1867) provided for the punishment

of public gambling and the keeping of common gaming house in the territories subject to the Lieutenant Governor of Bengal. Lottery has been, since 1870 made an offence under Section 294-A of the Indian Penal Code. Gambling agreements have been declared to be void under the Indian Contract Act, 1872 (Section 30). This in short is how gambling is viewed in India.

... ..

41. It will be abundantly clear from the foregoing observations that the activities which have been condemned in this country from ancient times appear to have been equally discouraged and looked upon with disfavour in England, Scotland, the United States of America and in Australia in the cases referred to above. We find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of the hard earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject-matter of a fundamental right guaranteed by Article 19(1)(g). We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient country's trade, commerce

or intercourse to be declared as free under Article 301. It is not our purpose nor is it necessary for us in deciding this case to attempt an exhaustive definition of the word "trade", "business", or "intercourse". We are, however, clearly of opinion that whatever else may or may not be regarded as falling within the meaning of these words, gambling cannot certainly be taken as one of them. We are convinced and satisfied that the real purpose of Articles 19(1)(g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and in essence are extra-commercium although the external forms, formalities and instruments of trade may be employed and they are not protected either by Article 19(1)(g) or Article 301 of our Constitution.

... ..

46. For the reasons stated above, we have come to the conclusion that the impugned law is a law with respect to betting and gambling under Entry 34 and the impugned taxing section is a law with respect to tax on betting and gambling under Entry 62 and that it was within the legislative competence of the State Legislature to have enacted it. There is sufficient territorial nexus to entitle the State Legislature to collect the tax from the petitioners who carry on the prize competitions through the medium of a newspaper printed and published outside the State of Bombay. The prize competitions being of a gambling nature, they

cannot be regarded as trade or commerce and as such the petitioners cannot claim any fundamental right under Article 19(1)(g) in respect of such competitions, nor are they entitled to the protection of Article 301. The result, therefore, is that this appeal must be allowed and the orders of the lower courts set aside and the petitions dismissed and we do so with costs throughout. The state will get only one set of costs of hearing of this and Appeals Nos. 135, 136, & 187 of 1956 throughout."

26. The Hon'ble Supreme Court, in the case of **State of Andra Pradesh v. K. Satyanarayana**, reported in **AIR 1968 SC 825**, has held that the game of Rummy is a "game of skill" (Hyderabad Gaming Act). But the Court has also indicated that if there is gambling or if the gambling house is making profit out of the game, then it could amount to an offence under the prevalent laws. The relevant portion is extracted as under:

"12. ... The game of rummy is not a game entirely of chance like the "three-card" game mentioned in the Madras case to which we were referred. The "three card" game which goes under different names such as "flush", "brag" etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the

fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone, it cannot be said that Rummy is a game of chance and there is no skill involved in it. 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 played for stakes, the offence may be brought home. In this case, these elements are missing and therefore we think that the High Court was right in accepting the reference it did."

27. The Hon'ble Supreme Court qua monetization in the aforesaid **K. Satyanarayana**'s case, has held as follows:

"9. ...Clubs usually make an extra charge for anything they supply to their members, because it is with the extra payments that the management of the club is carried on and other amenities are provided. Money,

of course, is collected and there is expenditure for running of each section of the establishment. Just as some fee is charged for the games of billiards, ping-pong, tennis, etc., an extra charge for playing cards (unless it is extravagant) would not show that the club was making a profit or gain so as to render the club into a common gambling house. Similarly, a late fee is generally charged from members who use the club premises beyond the scheduled time. This is necessary, because the servants of the club who attend on the members have to be paid extra remuneration by way of overtime and expenditure on light and other amenities has to be incurred beyond the club hours. Such a charge is usual in most of the clubs and we can take judicial notice of the fact."

28. A Full Bench of the Hon'ble Supreme Court, in **Dr.K.R.Lakshmanan v. State of Tamil Nadu and another**, reported in **AIR 1996 SC 1153**, while dealing with the issue of horse racing, has held that horse racing is neither 'gambling' nor 'gaming', but a game of 'mere skill' and that the expression 'mere skill' would mean substantial degree or preponderance of skill. While holding so, the Hon'ble Supreme Court has followed it's own decision in

Chamarbaugwala's case and in **K.Satyanarayana's** case, wherein, it was clearly laid down that (i) the competitions where success depends on substantial degree of skill are not 'gambling' and (ii) despite there being an element of chance, if a game is preponderantly a game of skill, it would nevertheless be a game of "mere skill".

29. The Andhra Pradesh High Court, in **D.Krishna Kumar and another v. State of Andhra Pradesh**, reported in **2003 CrI.L.J. 143**, by relying upon the decision of the Hon'ble Supreme Court in **K.Satyanarayana's** case (supra), has held that till such time, the State Gambling Act is amended to lay down that playing Rummy with stakes is "gaming", playing Rummy with stakes is not "gaming" within the meaning of the Act. (Andhra Pradesh Gaming Act)

30. With respect to the game Poker, the High Court of Karnataka, in **Indian Poker Association (IRA) v. State of Karnataka**, reported in **2013 OnLine Kar 8536**, has observed that Poker is a "game of skill", no license is required for conducting games of skills, including Poker, in club

premises meant for recreational purposes, as long as they are conducted in accordance with prevailing law of the State. However, the Gujarat High Court, in **Dominance Games Pvt. Ltd., v. State of Gujarat**, reported in **2017 SCC OnLine Guj 1838**, while following the decision in **K.Satyanarayana's** case (supra), has held that Poker is a "game of chance".

31. The Punjab and Haryana High Court, in the case of **Varun Gumber v. Union Territory of Chandigarh and others**, reported in **2017 CrI.L.J. 3836**, while dealing with the fantasy sport - Dream11, after elaborate discussions, has declared fantasy sport as a skilled game, in view of the fact that the result of the fantasy game contest is not at all dependent on winning or losing of any particular team in the real world game. Therefore, no betting or gambling is involved in the fantasy game. The relevant portion from the said decision is extracted as under:

"20. It has been found that horse racing like foot racing, boat racing, football and baseball is a game of skill and judgment and not a game of chance. The aforementioned finding squarely applies to the present case. Even from the submissions and contentions of

respondent-company and factual position admitted in writ petition, I am of the view that playing of fantasy game by any participant user involves virtual team by him which would certainly requires a considerable skill, judgment and discretion. The participant has to assess the relative worth of each athlete/sportsperson as against all athlete/sportspersons available for selection. He is required to study the rules and regulations of strength of athlete or player and weakness also. The several factors as indicated above submitted by the respondent-company would definitely affect the result of the game. Admittedly, the petitioner himself created a virtual team of a Cricket Match between two countries as indicated in the website by choosing 11 players out of total player, who were to play for two countries collectively and after forming a virtual team of 11 players as per his own selection, knowledge and judgment, which is thoughtful Will, he joined various leagues for the leagues selected by him and after registration which was declared before participating, was not about possibility of winning or losing like horse riding not every better is winner.

21. The respondent company's website and success in Dream 11's fantasy sports basically arises out of users exercise, superior knowledge, judgment and attention. I am of the further view that the element of skill and predominant influence on the outcome of the Dream11 fantasy than any other incidents are and therefore, I do

not have any hesitation in holding the any sports game to constitute the game of "mere skill" and not falling within the activity of gambling for the invocation of 1867 Act and thus, the respondent company is therefore, exempt from the application of provisions, including the penal provisions, in view of Section 18 of 1867 Act. Equally so, before I conclude, I must express that gambling is not a trade and thus, is not protected by Article 19(1)(g) of Constitution of India and thus, the fantasy games of the respondent-company cannot said to be falling within the gambling activities as the same involves the substantial skills which is nothing but is a business activity with due registration and paying the service tax and income tax, thus, they have protection granted by Article 19 (1)(g) of Constitution of India."

32. A Division Bench of the Bombay High Court, in the case of **Gurdeep Singh Sachar v. Union of India, Criminal Public Interest Litigation Stamp No.22 of 2019, dated 30.04.2019**, has also held that Dream11 is a "game of skill" and not a "game of chance". With regard to the taxation policy ordered in this decision, SLP is still pending before the Hon'ble Supreme Court, where an order of interim stay was passed.

33. Following the aforesaid decisions, the High Court of Rajasthan, in **Chandresh Sankhla v. State of Rajasthan**, reported in **2020 SCC OnLine Raj 264**, has held that the issue of treating the game Dream11 as having any element of betting / gambling is no more *res integra*.

34. A Division Bench of this Court in the case of **Director General of Police, State of Tamil Nadu v. Mahalakshmi Cultural Association**, reported in **(2012) 3 Mad LJ 561**, has held as follows:

"24. On the basis of the above discussions, we arrive at the following conclusions:

(1) The game of rummy (13 cards) is only a game of skill even though an element of chance is also involved.

(2) In the event rummy is played by the members or the guests without stakes, the provisions of the Chennai City Police Act are not attracted.

(3) In the event rummy is played by the members or the guests with stakes, the provisions of the Chennai City Police Act are attracted.

(4) In the event the Club/Association either allows its members or guests to play rummy with stakes or make any profit or gain out of such gambling, the Police has the authority to invoke the provisions of the Chennai

City Police Act.

(5) In order to ascertain as to whether the premises is used as a gaming house for gambling, the Police is entitled to invoke Section 23 of the Act."

35. Yet another Division Bench of this Court, in the case of **Director General of Police and others v. S.Dillibabu**, in **W.A.No.296 of 2013**, dated **06.10.2017**, has quashed the order passed by a learned Single Judge in W.P.No.21620 of 2011, dated 04.11.2011, insofar as allowing the petitioner association to play Rummy (13 cards) with stakes by its members and guests.

36. Very recently, the High Court of Kerala, in the case of **Ramachandran,K v. The Circle Inspector of Police**, reported in **2019 SCC OnLine Ker 6788**, relying upon the decisions of the Hon'ble Supreme Court in **K.Satyanarayana's** case and **Dr.K.R.Lakshmanan's** case, has held that playing rummy with stakes would not come within the purview of 'gaming' for the purposes of gambling, under the Act (Kerala Gaming Act). The relevant portion from the said decision is extracted thus:

"30. While we cannot agree with the point of playing rummy for stakes within the club premises by the professional gamblers as a game of skill, we are of the opinion that the issue has, however, to be looked at from the social perspective as well. ..."

37. It is to be noted at this juncture that except the decisions in **Varun Gumber's** case [High Court of Punjab and Haryana]; **Gurdeep Singh Sachar's** case [Bombay High Court]; and **Chandresh Sankhla's** case [High Court of Rajasthan] which dealt with the fantasy sport - Dream11, none of the precedents referred supra deal with online gaming. The decisions discussed supra are in respect of recreational clubs and not specifically refer about any virtual area, like, Internet. Neither the Public Gaming Act, 1867, nor the Tamil Nadu Gaming Act, 1930, specifically speaks about such virtual area, as the advent of such online games are very recent. In fact, the Hon'ble Supreme Court, while dealing with an appeal, has held that the issue pertaining to online rummy has not arisen at all, till date.

38. India has a rich heritage with a diverse range of sports / games. Sports is not only an important source of entertainment, but also imparts value of hard work, discipline and co-operation. To regulate the physical sports / games, we are having a legislative set up, but having such a set up to deal with the emerging online games / virtual games is the need of the hour. A comprehensive regulatory framework by a regulatory body is necessary to regulate the online sports and to curb any illegal activities as well. In fact, such regulation of online sports would encourage investment in the sector, which could lead to technological advancements as well as generation of revenue and employment.

39. We should not lose sight of the fact that nowadays, almost in all the social media, youngsters are being attracted, to play such online games, by alluring with prize money. Gaming sites are also partaking a slice on the winning hand, as of a virtual gambling house. In fact, these online games lure the unemployed youth that they can earn money by playing these games.

40. Saint Thiruvalluvar in 934th and 939th couplet of Thirukkural described the evils of gambling as follows:

சிறுமை பலசெய்து சீரழிக்கும் சூதின்

ஹுமை தருவதொன்று இல்.

... 934

which means—

"There is nothing else that brings poverty like gambling which causes many a misery and destroys one's reputation."

உடை செல்வம் ஊண்ஒளி கல்விஎன்று ஐந்தும்

அடையாவாம் ஆயம் கொளின்.

... 939

which means—

"Gambling would preclude the Five Rathnas, viz., Reputation, Education, Wealth, Food and Cloth, from reaching the person."

41. At this juncture, this Court is inclined to share the modus operandi of such online games.

42. If X and Y want to play a game, both of them have to bet a sum of Rs.10/- (Say). The winner will get the amount that he put in place, ie., Rs.10/- and in addition

to that, he will get an additional sum, Say 75% that was put in place by the opponent, being the prize amount. The balance, ie., 25%, will be credited to the account of the particular online gaming site. The loser will loose everything.

43. If a group of persons (Say 10) want to play a game, each one of them have to bet a sum of Rs.10/- (Say). At the end of the game, the Winner will get his amount as well as 100% of his bet amount, being the prize money. The Runner will get his amount as well as 70% of his bet amount, being the prize money. The losers will not only loose the game, but also loose Rs.10/- that was put in by them. A rough calculation for the aforesaid scenario will give a whopping sum of Rs.63/- to the online gaming site, while awarding Rs.20/- to the Winner and Rs.17/- to the Runner. Naturally, a player, if he looses his amount, will try to meet out his loss by playing again and again.

44. To be noted, if these set of unemployed youth, who are also under frustration, if get trapped into these

elements, may go to any level to meet their loss. The most dangerous thing for any Society is educated criminals. If a knowledgeable person turns out to be a criminal, it would be a havoc on the society. Nowadays, we are also witnessing Graduates involving in chain snatches and other decoity cases.

45. Keeping these aspects in mind and to regulate and monitor such virtual games, some of the States have amended their prevailing Gaming Acts.

46. The Sikkim Online Gaming (Regulation) Act, 2008, mandates that license has to be obtained for conducting such online games, within the State's boundaries.

47. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016, has excluded the staking of money on games of skill from the ambit of gambling. The Act also defines what are the games of skill and also listed them. Of course, license has to be obtained for conducting such games, within it's boundaries.

48. The Telangana Gaming (Amendment) Act, 2017, prohibits all forms of gaming for money, be it games of skill or games of chance. In fact, the Government of Telangana has further moved a Bill to amend the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986, by including "Gaming Offender", who commits or abets the commission of offences punishable under the Telangana Gaming Act, 1974.

49. When the menace of lottery was at its peak, sucking the blood and life of several families, the Government of Tamil Nadu, in the year 2003, has taken a rigid stand, with an iron hand and banned the sale of all lotteries, including online, within the territory of the State, by passing the Government Order in G.O.Ms.No.20 Home (Courts II) Department dated 08.01.2003. This Government Order, though challenged before the Courts of law, still holds the field. By virtue of this order, the Government has thus prevented the suicidal deaths, who have not only lost their

hard earned money but also their family peace and reputation, in the State.

50. Similarly, when the menace of charging exorbitant interest, by way of 'daily vatti', 'hourly vatti', 'kandhu vatti', 'meter vatti', 'vattiku vatti', was in its prime, the Government of Tamil Nadu, in the year 2003, has enacted Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, thereby, wiped the tears of the affected people at large.

51. Therefore, this Court hopes and trusts that this Government shall take note of the present alarming situation and pass suitable legislation, thereby, regulating and controlling such online gaming through license, of course, keeping in mind the law of the land as well as the judicial precedents in this regard. This Court is not against the virtual games, but, the anguish of this Court is that there should be a regulatory body to monitor and regulate the legal gaming activities, be it in the real world or the virtual world. Needless to say that if the

Government intends to pass a legislation in this regard, all the stakeholders should be put in notice and their views should be ascertained.

52. Since this Court is exercising power under Section 482 Cr.P.C., with the above suggestions, this Court refrains from observing any further, leaving it to the Government.

53. In the result, this Criminal Original Petition is allowed and the proceedings pending against the petitioner / fifth accused in Crime No.175 of 2020 on the file of the Koodankulam Police Station, Tirunelveli, is quashed. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
gk

सत्यमेव जयते

24.07.2020

WEB COPY

NOTE :

i) Registry is to mark a copy of this order to -

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.The Secretary,
Government of Tamil Nadu,
Department of Home, Prohibition & Exercise,
Secretariat, Chennai.
- 3.The Director General of Police,
Chennai.

ii) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

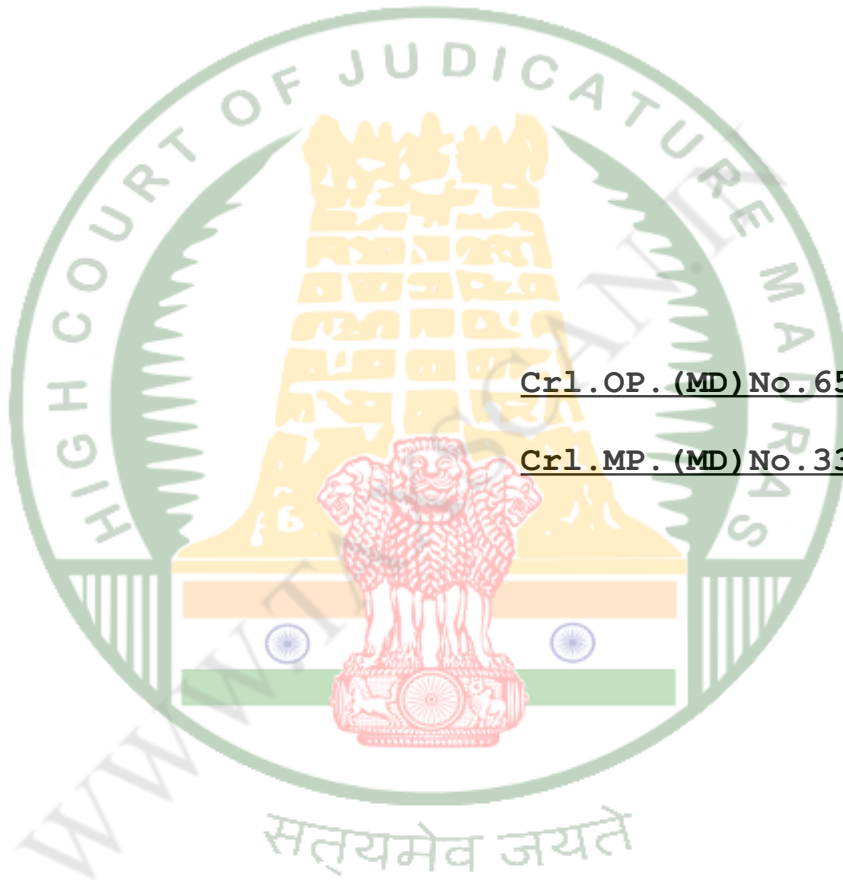
To

The Inspector of Police,
Koodankulam Police Station,
Tirunelveli.

WEB COPY

B. PUGALENDHI, J.

gk



Cr1.OP.(MD)No.6568 of 2020
and
Cr1.MP.(MD)No.3340 of 2020

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24.07.2020