

Siddaraj and Others Vs. State of Tamil Nadu and Another

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Court : Chennai

Decided On : Dec-07-1994

Reported in : 1995(2)ALT(Cri)492; 1996CriLJ1024

Judge : Thangamani, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Cri. Original Petitions Nos. 16435/92 and 687/93

Appellant : Siddaraj and Others

Respondent : State of Tamil Nadu and Another

Advocate for Def. : Somasunderam, Adv.

Advocate for Pet/Ap. : M. Sathyanarayanan, Adv.

Judgement :

ORDER

1. These petitions coming on for hearing upon perusing the petitions and the respective Memorandum of Grounds filed in support thereof and upon hearing the arguments of Mr. M. Sathyanarayanan Advocate for the petitioners in each of the petitions, and of Mr. S. Somasundaram Government Advocate (Crl. Side) on behalf of the State, the Court made the following order.

The petitioners in the earlier application are accused numbers 4 to 13 and the petitioners in the other application are accused Numbers 1 to 3 in S.T.R. No. 3771 of 92 in the Court of Judicial Magistrate No. 1, Salem Crime Nos. 969 and 981 of 92 of Salem Town Police Station were registered against them under Sections 8 and 9 of the Tamil Nadu Gaming Act, 1930 on the allegation that on 21-10-92 at about 11.45 p.m., when the Inspector of Police, Sooramangalam in charge of Salem Town Police Station raided the Literary Society in Cherry Road, Salem Town, the petitioners in the earlier application were found playing the game 'Mangatha' of 'Veetu Cheettu' by having 52 playing cards and a cash of Rs. 4,344.35. The petitioners in the later application are watchman of the building, who had permitted the other petitioners to play the said game. The Inspector of Police has seized the cash and the playing cards.

2. In these two applications, the petitioners seek to quash the proceedings against them by invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C.

3. Learned counsel for the petitioners submits that the petitioners in the earlier application are members of Salem Literary Society. It is a registered one under the Societies Registration Act. It was established in the year 1890. The object of the Society is intellectual, social, physical and general advancement for the community of Salem. The society seek to attain these objects by subscribing to the leading journals and periodicals of the day and by maintaining a library by arranging for discussions, lectures and reading of papers and by Social gatherings, sports and games. The society is also providing recreation facilities such as Chests Carrom, Table Tennis, Tennis, Badminton, Shuttle Cock, Billiards, Trump, Bridge and Rummy for the relaxation of the members. The petitioners herein are Textiles merchants, theatre and lodge owners, leading industrialists, building contractors, advocates, landlords, Zamindars and film distributors. On the eve of Deepavali, they were playing the game of Rummy in the society premises on 22-10-92. They were indulging only in a common friendly amusement and there was no idea of making profit. The Salem Literary Society housed in Door No. 53, Cherry Road, Salem-L, is not a common gaming house within the meaning of Section 3 of the Tamil Nadu Gaming Act. The police authorities had not complied with the requirements of Section 5 of the Tamil Nadu Gaming Act.

4. As per Section 8 of the Tamil Nadu Gaming Act, whoever opens, keeps or uses or permits to be used any common gaming house for gaming therein is liable to be punished. And under Section 9 of the Act, whoever is found gaming or present for the purpose of gaming in a common gaming house is guilty. And any person found in any common gaming house during any gaming or playing therein shall be presumed until the contrary is proved to have been there for the purpose of gaming. The existence of a common gaming house is an essential prerequisite for initiation of proceedings under Sections 8 and 9 of the Act. In the absence of any common gaming house, no offence is made out under these two sections.

And the definition of the expression 'Common gaming house' in S. 3 of the Act runs as under :-

"Common gaming house' means any house room, tent, enclosure, vehicles, vessel or any place whatever in which cards, dice, tables or other instruments of gaming are kept or used for the profit of 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.'

5. Time and again this Court has held that the running of a common gaming house is a primordial requisite before any one can be convicted under Sections 8 and 9 of the Act and gaming is not an offence per se. In this case, even assuming that the allegations contained in the complaint are true, this would only indicate that the petitioners in the earlier case were found seated around and there were 52 cards and some cash before them. Against the three watchmen, who are petitioners in the second case, there is absolutely no mention about their permitting the use of the premises for gaming activities with a view to derive profit or gain for themselves. The First Information Report does not proceed beyond the point that the petitioners played card game for stakes with profit motive. There is not even a whisper that any table money was collected. So, even on the basis of the allegations, in the First Information Report, there is no material to hold that the

Literary Society was used as a common gaming house. And it is settled law that when the allegations stated in the complaint or the charge sheet do not constitute any offence it is competent to the High Court in exercising its inherent jurisdiction under Section 482, Criminal Procedure Code to quash the order passed by the Magistrate taking cognizance of the offence.

6. In the result, the Crl. Original Petitions are allowed and the proceedings in S. T. C. Nos. 3770 and 3771 of 92 in the Court of Judicial Magistrate No. I, Salem, are hereby quashed.

7. Petitions allowed.

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