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D. Siluvai Venance v. State rep. by the Inspector of Police, Koodankulam

CITATION	CrL.OP. (MD) No. 6568 of 2020 & CrL.MP.(MD) No. 3340 of 2020
DATE OF ORDER	24 July 2020
BENCH	Madras High Court, Madurai Bench
CORAM	Hon'ble Justice B. Pugalendhi

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A. BRIEF FACTS:

- The accused Petitioner was in the company of a group of friends playing a game of cards in a farmland owned by one of the co-accused.
- The police upon entering the premises caught the accused persons with playing cards and money and arrested them for playing in a public place in terms of Section 12 of the Tamil Nadu Gaming Act, 1930 ('Act').
- After being arrested, the Petitioner approached the Court under Section 482 of the Criminal Procedure Code, 1973 ('Code') to call for the records of the First Information Report ('FIR') lodged and to quash the same in respect of the Petitioner.

B. ISSUE

- Whether a person is liable to be penalised for being a spectator to a game of cards being played for money when it is not being played in a public place or street?

C. CONTENTIONS OF THE PETITIONER:

- The Petitioner was merely a mute spectator to a game of cards being played by his co-accused and was himself not involved in the game.
- Further, the game was being played in premises owned by one of the co-accused. Undisputedly, even the FIR records that the concerned place was not a public place, which is a necessary condition for charging with an offence under Section 12 of the Act.

D. CONTENTIONS OF THE RESPONDENT:

- The accused persons were playing cards for stakes and the legal presumption under Section 6 of the Act, that persons found gaming with cards in any place are presumed to be playing in a common gaming house which is a punishable offence under the Act, arises.
- The case is at the preliminary stage of an FIR and where the Petitioner and other co-accused had been caught with playing cards and money, interference at this stage would not be proper.

E. DECISION:

- By exercising its powers under Section 482 of the Code, the Court quashed the proceedings against the Petitioner as the place in question was not a public place and

thus, to charge him under Section 12 of the Act would be an abuse of the process of law.

F. JUDGE'S OBSERVATIONS ON VIRTUAL GAMING IN INDIA:

- During the course of arguments, the Hon'ble Judge raised a query to the Police as to how is it that they took action to stifle gaming for stakes by persons even when they were not in public places but online gaming for stakes goes unchecked by the police virtually throughout the country.
- In response, the Police in its status report confirmed that currently, there was no law regulating or licencing online gaming in Tamil Nadu but that the State of Telangana had recently amended its gaming law to cover virtual gaming within its ambit.
- The Hon'ble Judge observed there are several state legislations and court decisions on regulating and prohibiting gaming for monetary stakes and yet, in this new day and age, where youth is increasingly indulging in online gaming for stakes, regulatory legislations are scarce. He noted that most state laws pre-date the digital era except those of Nagaland, Sikkim and Telangana, which actively regulate online gaming.
- The Hon'ble Court noted that in the past, whenever a certain kind or variation of games or gambling had sprouted, the Government had risen to the occasion and legislated in time to regulate it. It hoped that the same would soon be done yet again.
- The following paragraph captures the far-sightedness of the Hon'ble Judge as to why it is the need of the hour to regulate online gaming:

“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.”