

S.Kumarappan Vs. State

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Court : Chennai

Decided On : Apr-11-2014

Judge : A.Arumughaswamy

Appellant : S.Kumarappan

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

11. 04.2014 CORAM THE HONOURABLE MR. JUSTICE A.ARUMUGHASWAMY
CRL.R.C.No.311 of 2012 and M.P.No.1 of 2012 1. S.Kumarappan 2.
K.Balakrishnan 3. P.Ravi @ Senthilnathan 4. Krishnaraj 5. P.Nagaraj 6. Settu 7.
Murugan 8. Sithuraj 9. Sabapathy 10.Ramesh Babu 11.Jayakumar
12.S.Sundaresan 13.Vijayakumar 14.K.Murugan 15.Dayaldoss 16.Ganesan
17.Shanmugam 18.K.Rukmangathan 19.Jayaraman 20.Ramu 21.M.Sivaprakasam
22.E.B.Balan 23.V.Palanisamy 24.Daiyas 25.Rajkumar 26.Subramaniam
27.S.Balachandran 28.Karnan 29.A.B.Baskar 30.Jayaraj ... Petitioners/Accused
Vs. State by Inspector of Police, Fairlands Police Station, Salem. ...
Respondent/Complainant Criminal Revision Case filed under Section 397 r/w 401
of Cr.P.C. to call for the records relating to the conviction and sentence passed in
S.T.C.No.231/2012 on the file of the learned Judicial Magistrate No.V, Salem
dated 01.03.2012 and set aside the same. For Petitioner : Mr.Abudukumar
Rajaratnam, for Mr.S.Ashokkumar For Respondent : Mr. C.Iyyapparaj, Govt.

Advocate (Crl.Side)

ORDER

The Criminal Revision is filed to set aside the conviction and sentence passed in S.T.C.No.231/2012 on the file of the learned Judicial Magistrate No.V, Salem dated 01.03.2012.

2. The case of the prosecution is that on 29.2.2012 when the Additional Deputy Commissioner of Police along with his party men made search in Salem Fair Lands Recreation Club, they have found that the petitioners 1 to 16 and 17 to 30 were playing cards for money in Room Nos.1 and 2 and they were all arrested and a sum of Rs.84,370/- has been recovered and the table, chairs and cards have also been seized and a case has been registered under Sections 8 and 9 read with 12 of TNG Act in Crime No.229 of 2012 and the accused were produced before the learned Judicial Magistrate No.V, Salem.

3. The FIR has been taken cognizance in STC.No.231 of 2012 and on their admission, the learned Magistrate convicted and sentenced them to undergo simple imprisonment for two days and to pay a fine of Rs.500/- each under Section 8 of the Tamil Nadu Gaming Act and sentenced to pay a fine of Rs.200/- each under Section 9 of the TNG Act and also sentenced to pay a fine of Rs.100/- under Section 12 of the TNG Act and in default to undergo one week simple imprisonment by order dated 1.3.2012. A sum of Rs.84,370/- recovered recovered from them and the table, chairs and cards seized from them are ordered to be confiscated. But, now according to the petitioners, they have not pleaded guilty. Hence, they have come forward with this revision seeking to set aside the conviction and sentence imposed on them by the trial court.

4. Heard both sides and I have also perused the materials available on record carefully.

5. The learned counsel appearing for the petitioners contended that the petitioners have been charge sheeted by the respondent police under Sections 8 and 9 read with 12 of TNG Act in Crime No.229 of 2012 and on their own admission, they

have been convicted. Whereas the Tamil Nadu Gaming Act, 1930 has been repealed and the Chennai City Police (Extension to the Cities of Salem, Tiruchirappali and Tirunelveli) Act, 1997, is attracted to the offences committed at Trichy, Tirunelveli, Salem and Coimbatore and it was published in the Part IV, Section 2 of the Tamil Nadu Government Gazette, Extraordinary, dated 28th October 1997. Hence, the Sections 8 and 9 read with 12 of TNG Act will not be attracted for the offences committed by the petitioners. Hence, he prays that the revision has to be allowed and the conviction and sentence imposed against the petitioners/accused has to be set aside.

6. The learned Government Advocate (Crl. side) contended that the trial court has convicted and sentenced the accused only on the basis of the admission of guilty of offence by them. Hence, the present revision will not lie and the same is liable to be dismissed.

7. From the perusal of the Tamil Nadu Gaming Act, 1930 it is seen that Section 3 defines ".common gaming -house".. Thereafter the Chennai City Police (Extension to the Cities of Salem, Tiruchirappali and Tirunelveli) Act, 1997 came into force on the 1st day of June 1997. From the perusal of the FIR it is seen that the occurrence had taken place on 29.02.2012 and the case was registered in Cr.No.229 of 2012 on the file of the respondent for the offence under Section 8, 9 r/w 12 of the Tamil Nadu Gaming Act, 1930. Therefore, it is clear that from 01.06.1997, the Tamil Nadu Gaming Act 1930 has been repealed and the Chennai City Police (Extension to the Cities of Salem, Tiruchirappali and Tirunelveli) Act, 1997 came into force. Therefore, as per Section 8 of the Chennai City Police (Extension to the Cities of Salem, Tiruchirappali and Tirunelveli) Act, 1997, Tamil Nadu Gaming Act 1930 is not applicable to the Corporation areas of Salem District. Hence, the offence against the petitioners is attracted only under the provisions of the Chennai City Police (Extension to the Cities of Salem, Tiruchirappali and Tirunelveli) Act, 1997.

8. Now the short point for my consideration is whether the final report laid by the prosecution under the Tamil Nadu Gaming Act 1930 is sustainable ?.

9. From the perusal of the Act it is seen that previously the Madras City Police Act is applicable only to the Madras City and thereafter this has been extended to the cities of Salem, Tiruchirappalli and Tirunelveli as per the Chennai City Police (Extension to the Cities of Salem, Tiruchirappalli and Tirunelveli) Act, 1997. The occurrence had taken place only on 29.02.2012. Therefore, on the date of occurrence Tamil Nadu Gaming Act, 1930 is not in force and it has been substituted by the Chennai City Police (Extension to the Cities of Salem, Tiruchirappalli and Tirunelveli) Act, 1997 came into force and is applicable for the offence said to have been committed by the petitioners. Since the petitioners admitted the guilty of the offence, on that basis the learned Magistrate has passed an order of conviction and sentence as stated above and imposed fine of Rs.84,370/-. I am of the view that filing of final report under the wrong provision of the Act itself is not maintainable in law. Furthermore, on that basis the learned Judicial Magistrate ought not to have taken cognizance of the same. However, the learned Judicial Magistrate has taken cognizance of the offence and without giving time for reflection, examined the petitioners and convicted and sentenced them on the same day. From all the cumulative effect I am of the view that filing the final report by the respondent under the wrong provisions of the Act and taking cognizance of the offence by the learned Judicial Magistrate are not sustainable in law and on that ground the conviction and sentence imposed by the trial Court are liable to be set aside and are accordingly set aside. The Revision is allowed. Consequently, connected miscellaneous petitions are closed.

10. The amount of Rs.84,370/- recovered from the revision petitioners and already confiscated by the trial Court is ordered to be returned to the revision petitioners equally. The fine amount if any paid by the revision petitioners is ordered to be refunded to them. The furniture and other things seized from the place of occurrence and already confiscated are ordered to be returned to the owner of the property. 11.04.2014 Index: Yes Internet:Yes tsi/gr. To The Judicial Magistrate No.V, Salem A.ARUMUGHASWAMY, J., tsi/gr. CrI.R.C.No.311 of 2012 11.04.2014