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C. Gangappa Vs. State of Mysore

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Court : Karnataka

Decided On : Jun-27-1956

Reported in : 1956CriLJ1418

Judge : Venkataramaiya, C.J.

Appellant : C. Gangappa

Respondent : State of Mysore

Judgement :
ORDER

Venkataramaiya, C.J.

1. The petitioner who was accused 6 in the trial Court has been convicted of the offence of keeping a common gaming house and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs. 200/-. The conviction and sentence are both confirmed in appeal. The correctness of this has been questioned on the ground that proof of any income or profit being derived by allowing the premises to be used for gambling is Jacking in the case and that the examination of the petitioner is defective

Five others who were tried along with the petitioner were found guilty of gaming and sentenced to fines. These have not challenged the convictions. It must therefore be taken as established that there was gaming in the premises by those persons.

2. Though it is not disputed that the building in which gaming was carried on is that of the petitioner, the contention is that in the absence of evidence of monetary benefit to the petitioner from this he cannot be considered to be keeping a common gaming house under the Act.

The definition of the expression in Section 4 (3) of the Act no doubt mentions gain to the person as a necessary element and shows that mere use of the property for gaming is not enough. If that was all to be considered the contention would have had some force. But Section 63, explanation 1 provides for a presumption of gain when instruments of gaming are found. The presumption is stronger as gaming is proved to have been indulged in. The objection to the sufficiency of evidence is therefore untenable.

3. The criticism of the manner in which the petitioner was examined and his answers have been recorded cannot be lightly treated. Though the allegation against the petitioner was different from that against others, the same question as was put to others was repeated to the petitioner. He was not apprised that the complaint concerning him was that he had kept a common gaming house and the trial Magistrate seems to have Ignored the distinction between the accusation against the petitioner and against others though they were all tried together.

Even more serious is the omission to certify that the answer was recorded by him and leaving the authenticity of the petitioner having made the statement in doubt. Section 364, Criminal P.C. requires that the Magistrate should note that it was made in his presence and that such a note should be signed by the Magistrate. Section 242 of the Code enjoins that particulars of the offence should be explained to the accused and his answer thereto recorded. As far as possible the plea may be reduced to writing in his own words. See 7 Mysore LJ 144 (A). These important provisions of law have not been followed.

The question put relates to actual gaming and was obviously wrong and misleading so far as the petitioner was concerned. His answer is not certified as being taken down by the Magistrate. The examination of the petitioner under Section 342 of the Code follows this almost as if it is a continuation of the proceeding under Section 242. The interval as can be seen from the order sheet is

more than a month. The question formulated even then was mechanical.

It is regrettable that the Magistrate who has been in service for some years already should have overlooked the essential provisions of law and dealt with the case in an unsatisfactory manner. The defects referred to cannot be lightly passed off and the learned Additional Assistant Advocate-General was not able1 to cite any instance in which such omissions are held to be inconsequential.

4. The conviction and sentence of the petitioner are set aside as the defects referred to are likely to have prejudiced the petitioner. Accused 6 (petitioner) is acquitted. The bail bonds are cancelled and the fine if lasted, will be refunded.

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