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Erappa and ors. Vs. State of Mysore

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Court : Karnataka

Decided On : Jun-17-1963

Reported in : AIR1964Mys53; 1964CriLJ414

Judge : K.S. Hegde, J.

Acts : Hyderabad Gambling Act, 1305 - Sections 13 and 13(1); Gambling Law

Appeal No. : Criminal Revn. Petn. No. 422 of 1962

Appellant : Erappa and ors.

Respondent : State of Mysore

Advocate for Def. : Radhakrishna, High Court Govt. Pleader

Advocate for Pet/Ap. : Manohar Rao Jagirdar, Adv.

Judgement :
ORDER

1. In this petition, it is urged on behalf of the petitioners, that on the facts found by the Court below (in Criminal Case No. 573/3 of 1960, on the file of the Munsiff-Magistrate, Bidar), the conviction of the petitioners under Section 13 of the Hyderabad Gambling Act, is unsustainable.

2. The facts found by the Court below, are as follows: On credible information that gambling was going on in A-12's hotel, P. W. 2, the P. S. I., raided that hotel, at

about mid-night, on 8-10-1960. At the time of the raid, all the petitioners were found playing cards for money. They were playing a game known as parale, which is a game of chance. They were arrested at the spot. During the search, P. W. 2 seized the playing cards found there as well as the stake money which amounted to one rupee and tight naya paise. The correctness of these facts is not challenged in this Court. The only point urged is that on the proved facts, the petitioners could not have been convicted under Section 13 of the Act.

3. The material portion, of Section 13 (1) reads as follows: -

Section 13 (1) 'A Police Officer shall be empowered to apprehend without warrant any person found gambling, for money or other valuable thing, with cards, dice, counter or other instruments and means of gambling used in gambling 'in any public street or thoroughfare or public place or open space, or'.....

Such person when apprehended, as aforesaid, shall be brought without delay before a Magistrate and, on conviction, shall be liable to a fine not exceeding fifty rupees or to imprisonment, simple or rigorous for a term not exceeding one month ..... '

(Underlining (in single quotation marks in this report -- Ed.) is mine)

4. The point to be decided is, whether the place where the petitioners were found gambling, can be said to be a 'public place'. From the records, it is not possible to gather in which part of the hotel the gambling was going on. From the facts stated in the judgment, it is reasonable to conclude that it was going on in a room. Can such a place be said to be a public place' ?

5. Before dealing with this question, it is necessary to mention that gambling as such, is not an offence. Under the gambling laws, what is made offence is, gambling either in a common gaming house or gambling in places of public resort. See: In re Unna Muhammad Sahib : AIR1938 Mad74 . The scope of the relevant provisions, if I may say so with respect, is well brought out in a decision of a Bench of the Bombay High Court in Emperor v. Jusub Ally, ILR 29 Bom 386. Batty, J., who delivered the judgment of the Bench observed that;

'the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection known as a place where gambling is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent.'

Dealing with the provision relating to gambling in a public place, his Lordship observed:

'the offence is not that the individual members arc making a profit at all but simply that they are carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed -- if his inclinations lie that way -- to join in or follow the bad example openly placed in his way.'

6. Having set out these aspects, let us now proceed to consider, whether the place in which the petitioners were found gambling, can be said to be a 'public place' within the meaning of that expression found in Section 13 (1). A 'public place' need not necessarily be a public property; but if it is a private property, the public must have access to it; it must be a place to which the public do in fact resort. The place to which the public has no access cannot be. called a 'public place'. See Ramjank Patwa v. Emperor AIR 1937 Pat 276 and also Gajju v. Emperor AIR 1917 Nag 154.

7. All that is proved in this case is, that on the night in question, gambling was going on in A-12's hotel. As mentioned earlier, the evidence does not disclose the exact place where it was going on. There is no evidence to show that to this hotel, the public had access, or that the public usually used to resort to it. More than that, the evidence on record does not justify the conclusion that the place where the gambling was going on was a place to which the public had access or that they used to resort to it, Even if a hotel as such can be considered as a 'public place', about which I do not propose to pronounce in this case, it cannot be said that every room in a hotel is a 'public place'.

8. The prosecution having failed to provethat the place where the gambling was going on,was a 'public place', the conviction of the petitioners cannot he sustained. Hence, this revisionpetition is allowed and the conviction of thepetitioners, is set

aside. Fine, if paid, will berefunded to them.

9. Revision allowed.

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