

Chickarangappa and ors. Vs. State of Mysore

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Court : Karnataka

Decided On : Jul-02-1971

Reported in : 1972CriLJ420

Judge : C. Honniah, J.

Appellant : Chickarangappa and ors.

Respondent : State of Mysore

Judgement :

ORDER

C. Honniah, J.

1. The petitioners have been convicted under Section 87 of the Mysore Police Act. 1963. hereinafter referred to as the Act. and sentenced to a fine of Rupees 50/- each by the Special First Class Magistrate. Madhugiri, in C. C. No. 21 of 1971.

2-3. The material facts necessary for the disposal of this petition are these:

On 6-1-1971. the Superintendent of Police Tumkur District (P. W. 1) received reliable information that gambling was going on near Madhugiri Town. He proceeded to Madhugiri with some Reserve Police. Special Branch Sub-Inspector of Police and Head Constable. He came near Harihareswara Temple near Madhugiri at 4.30 p. m. There he directed his men who had accompanied him to

change their dress. Then he proceeded to Shandy Maidan. From the Shandy Maidan he observed that about 30 to 40 persons had gathered in a dry land belonging to Putta Kamanna. As he proceeded towards those persons, he observed that 20 to 25 persons were standing around the place and the petitioners viz., 14 in number playing cards and some among them saving Andhar Bahar. The Superintendent of Police surrounded those persons who were playing cards and those who were standing there. All the persons that were standing, ran away but however the petitioners who were engaged in playing the same called Andhar Bahar were apprehended. He seized a cash of Rupees 716-27 P., playing cards matches, chappals. etc. and a cycle under Mahazar Ex. P-1. On these facts, the prosecution alleged that the accused were plaintiff a game of chance with stakes in a public place liable to be punished under Section 87 of the Act.

4. Six witnesses have been examined in this case. Except one person, the others are all Police Officials. P. W. 1 is the Superintendent of Police and P. W. 2. P. W. 3 and P. W. 4 are Police Officials working under him. Their evidence is that they found these petitioners playing a same of chance called Andhar Bahar staking money at about 4.30 p. m, P. W. 5 who was present at the time petitioners were apprehended, has not supported the case of the prosecution. He has deposed that some 5 or 6 persons were playing cards at about 1 or 1.30 p. m. Because he did not support the case of the prosecution he was treated hostile. There is no dispute in this case about the seizure of the cash and other articles or the apprehension of the accused when they were playing cards. The evidence of the four Police Officials is that the accused persons were playing a Same of chance called Andhar Bahar. they do not say that the accused persons were playing the game in any public street, or thoroughfare or in any place to which the public have or permitted to have access or in any Race course.

5. It is contended on behalf of the prosecution that the place where the petitioners were playing a same of chance was a place to which the public had or permitted have access, there is no proof whatsoever in this case that the place where the petitioners were playing cards, assuming that they were playing a game of chance, was a public place to which the public had access or permitted to have access. But on the other hand, the evidence of the Superintendent of Police is that the land

belonged to one Putta Kamanna and it was a dry land. Although the public can go to the land without any objection being raised by Putta Kamanna. the question that arises in this case is whether the dry land belonging to a private individual is a place to which the public have access as a matter of right or permitted to have access. Casual going into the land as is done in the rural parts is not the same thing as saying that the persons who go to the land have a right to go to that land, unless the evidence points out that at least the owner of the land had permitted free access to the public. There being no evidence that Putta Kamanna had allowed the public to have free access to the land or in the alternative that they had a right of access to that land, the dry land in which the petitioners were playing the cards on the day in question cannot come within the definition of place to which the public have or permitted to have access. It is not the case of the prosecution that the petitioners were playing in a public street, or thoroughfare much less in any race course. That being the case, even assuming for the sake of argument that the petitioners were playing a game of chance staking money in the private land belonging to Putta Kamanna. they cannot be held liable under Section 87 of the Act. Gamins per se is not punishable. What is punishable is gaming in a place stated under Section 87 of the Act. As a matter of fact this section begins as 'Whoever is found gaming in a public street,' meaning thereby that the place where the persons play the game of cards with stakes must be either a public street, thoroughfare or any place to which the public have or permitted to have access or in any Race course. If that is proved, then only the prosecution will succeed. In this case the very essential ingredient of Section 87 of the Act is not proved and on the other hand what has been proved is that the accused were playing cards in a private land. That is not punishable under Section 87 of the Act.

6. In the result. I allow this petition, set aside the conviction and sentence passed by the learned First Class Magistrate, Madhueiri, and acquit the accused. When the petitioners have not committed an offence under Section 87 of the Act, the seizure of money, viz.. Rupees 716-27, the Cycle M. O. 5 and other articles and the confiscation thereof are illegal. I therefore direct the return of the Cash of Rupees 716-27 to the 1st petitioner, and Cycle M. O. 5 to Madivalappa. who has claimed the cycle in the lower court. So far as the other articles are concerned, they are of no value and therefore they may be destroyed.

