

In Re: S. Narayana and ors.

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Court : Andhra Pradesh

Decided On : Aug-13-1957

Reported in : 1958CriLJ127

Judge : Manohar Pershad, J.

Appellant : In Re: S. Narayana and ors.

Judgement :

ORDER

Manohar Pershad, J.

1. The Station House Officer, Arundelpet, filed two charge-sheets against S, Narayana of Arundelpet, for keeping a gaming house, punishable under Section 8 of the Madras Gaming Act, 1930 (hereinafter referred to as the Act), and another under Section 9 of the Act against S. Narayana and nine others for playing cards with stakes in the gaming house owned by S. Narayana. Of the ten accused charged under Section 9 of the Act five pleaded guilty. The case against those that admitted the guilt was separated and they were found guilty on their admission and convicted and sentenced to pay a fine of Rs. 15 each and in default, five days' S.I. Out of the other five accused,, i.e., the present petitioners, two pleaded that they were not in the house at all and the remaining three pleaded not guilty. The two cases under Section 8 and Section 9 of the Act were tried together. Two witnesses were examined on behalf of the prosecution. On the evidence produced

the 1st Class Bench Magistrate held the petitioners guilty and sentenced each of them to a fine of Rs. 20 and in default to five days' S.I. Hence this revision on their behalf.

2. The learned Counsel for the petitioners argued first that the Court below erred in raising a presumption under Section 6 of the Act when the warrant as provided under Section 6 of the Act was not produced and the Dy. S. P. who is said to have accompanied the Sub-Inspector of Police was not examined. He next contended that if it was a fact as stated by P.W. 1 that Dy, S. P. accompanied him this would have been stated in the F. I. R. or the charge-sheet. The very fact, he urges, that there is no mention in either of these documents clearly shows that the Dy. S. P. did not accompany the Sub-Inspector. It is lastly urged that there is absolutely no evidence in the case to show that the place was a common gaming house and that S. Narayana was the keeper or that he was running the gaming house. On behalf of the respondent it is very rightly conceded that the warrant was not produced, but it is argued that when P.W. 1 clearly stated that the Dy. S. P. was with him, that was sufficient compliance with the provisions of Section 5 of, the Act to raise a presumption under Section 6. Adverting to the argument relating to the proof whether S. Narayana was running the gaming house, the learned Public Prosecutor, relying on Section 9 of the Act, urged that it was not necessary. In order to appreciate the arguments of the learned Counsel a reference to the relevant provisions of the Act, Act III of, 1930 is necessary.

3. Section 3 defines, a 'common gaming house' as any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel or place whether by way of charge for the use of instruments of gaming or of the house, room, tent, enclosure, vessel or place or otherwise; and includes any house, room, tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming. (Gaming does not include a lottery but includes wagering or betting.)

4. Section 5 relates to the power to grant warrant to enter a common gaming house, which runs as follows:

1) If any salaried Magistrate not inferior to a Magistrate of the Second Class or any Police Officer not below the rank of a Deputy Superintendent of Police, has reason 'to believe that any place is used as a common gaming .house, he may by his warrant give authority to any Police Officer not below the rank of a Sub-Inspector, to enter with such assistance' as may be found necessary, by night or by day, any such place and to arrest all persons found therein and to seize all instruments of gaming and all moneys and securities for money and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein, and to search all parts of such place and also the persons found therein.

x x x x2. Any Police Officer having power to issue a warrant under Sub-section (1) may, instead Of doing so, himself exercise all or any of the powers exercisable under such warrant.

5. Section 6 deals with the presumption. It. is to the following effect:

Any cards, dice, gaming table or cloth, board or other instruments of gaming found in any place entered or searched under the provisions of the last preceding section, or on any person found therein shall be evidence that such place is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming, although no place was actually seen by the Police Officer or any of his assistants.

6. It would appear from the above provisions that in order to hold a person guilty un- der the Act it is necessary first to prove that the house in which the game was played is a common gaming house, and once it is found that the place is used as a common gaming house, if any salaried Magistrate not inferior to a Magistrate of Second Class or any Police Officer not below the rank of a Deputy Superintendent of Police has reason to believe that any place is used as a common gaming house, he may issue a warrant giving authority to the Police Officer not below the rank of a S. I. to enter the house and arrest all persons found therein and to seize

all instruments of gaming as provided under Section 5 of the Act. It may be noted that cards or other instruments of gaming cannot by themselves be evidence of gaming. The obvious meaning is that the finding of cards or of instruments in such circumstances, shall be a ground for an inference that the place is a common gaming house. In most private houses cards or other instruments are to be found. Therefore, there must be some special circumstance to justify an inference that the place is a common gaming house. 'It is clear, therefore, that the mere finding of cards or of other instruments of gaming is not sufficient to justify such an inference, and it is for this reason that a safeguard has been provided in the Act for people who have cards in their houses, and that before their houses are searched a salaried Magistrate or senior Police Officer must have reason to believe that their house is a common gaming house. It is only after this that a warrant has to be issued under Section 5. Admittedly in the present case no warrant was produced. It is also not stated before me as to whether any warrant was ever issued. What is contended is that Section 5 has been sufficiently complied with inasmuch as the Dy. S. P. accompanied the S. I. The learned Public Prosecutor in this connection drew my attention to the, statement of. the S. I. wherein he stated that the Dy. S. P. accompanied him. If it was a fact that the Dy. S. P. had accompanied the S. I, it would have been mentioned in the F. I. R. or the charge-sheet. The learned Public Prosecutor very candidly conceded that in none of these documents is there a mention that the Dy. S. P. accompanied the S. I, However, he contended that the S. I. of Police has stated so, and there is no reason to disbelieve him. I am not inclined to accept this argument. It may be that the S. I. in order to justify his action, has stated so. The presumption under Section 6 of the Act could be made only if such a warrant had been issued under Section 5 of the Act. In the circumstances stated above, such a presumption does not arise. In view of this, the accused cannot be held guilty.

7. The petition in revision is allowed, the convictions and sentences passed upon the petitioners are set aside and the petitioners are acquitted. If the petitioners have deposited the fine, it should be refunded to them, The money that has been confiscated should be returned to them.

