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Court : Andhra Pradesh

Decided On : Jun-07-2000

Reported in : 2000(2)ALD(Cri)133; 2001CriLJ1498

Judge : Vaman Rao, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482; Andhra Pradesh Gaming Act, 1974 - Sections 6

Appeal No. : Criminal Petition No. 650 of 1998

Appellant : Jagarlamudi Krishna Kishore and ors.

Respondent : The State of A.P., Rep. by P.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Suresh Reddy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Vaman Rao, J.

1. This petition under Section 482 of Cr PC seeks quashing of the proceedings in STC NO.108 of 1997 on the file of the Judicial Magistrate of Second Class, Guntur

in which four petitioners herein who are accused nos.309 to 312 face charge under Section 3 of the A.P.Gaming Act.

2. The brief facts as disclosed in the charge-sheet may be stated as follows:

LVR and Sons Club has been running at Guntur for about 90 years. It was shifted to the present premises about 20 years back. The petitioners herein who are accused nos.309 to 312 are said to be the President, Vice President, Secretary and Treasurer respectively of the said club. It is stated that the main source of income to this club is derived by allowing the persons to gamble by playing game of cards called 'Kothamukka' which is said to be a game of pure chance and no skill being involved.

It is stated that the persons responsible for the management of the club not only allowing the regular members to indulge in gambling but several villagers from the nearby villages are allowed to visit the club by charging guest fee of Rs.40/- from each visitor and also permitted to participate in playing 'Kothamukka' and thus the club has become center for gambling cards and many villagers sustained losses by playing cards in the said club. Thus, it is stated that the said club has been functioning as a common gaming house within the meaning of Section 3 of the Andhra Pradesh Gaming Act, 1974.

2. The Superintendent of Police on getting credible information in this regard directed the Sub-Divisional Police Officer, Tenali to raid the said club with the Assistance of the Inspectors and staff by pooling them from various places. Accordingly, the Additional Superintendent of Police issued a search warrant in favour of the Sub-Divisional Police Officer, Tenali under Section 5 of the A.P.Gaming Act to raid the said club and arrest all the persons found there and to search all persons found and all parts of the said premises and seize all the monies found with such persons and also the instruments of gaming, money and other articles connected with gambling. In pursuance of this warrant, the Sub-Divisional Police Officer (LW.1) along with other officers and staff (LWs 2 to 23) and the Village Administrative Officers (LWs 24 to 27) and Mediators (LWs 28 to 35) raided the said club on 13.10.1996 at about 8.00 p.m. It is stated in the charge-sheet that the Sub-Divisional Police Officer divided the personnel taken for the raid

into three teams and raided the three halls where the gaming in the form of playing of Kothamukka cards was going on . In one hall, A4 to A96 were said to be present and participating in the gaming while A1 was organizing the game. Similarly another hall was raided where A97 to A 191 were said to be participating in the said game of Kothamukka while A2 was organizing the game. Likewise, the third team also raided another hall where A3 was said to be organizing the game and was shouting 'in and out' whereas Accused nos.198 to 308 were found gambling.

3. Various amounts, cards and other items found at the place of gambling and also on the person of those participating in gambling were said to have been seized.

4. Accused no.1 is said to have admitted when questioned about the profit earned from the gaming and is said to have showed the room situated in a corner of the club. The said room was got opened in which Rs.60,000/- was found A1 is also said to have stated that Accused nos.309 to 312, the petitioners herein who are the office bearers of the club were collecting 5% from each of the gambler who visited the club for playing cards. Similarly, A2 who was organizing the game in another room is also said to have stated that accused nos.309 to 312 are the authorities of the club, who get 5% profit from each of the gambler for allowing them to play in the said premises. He is also said to have stated that the commission amount derived on that day was Rs.30,000/- which was remitted just before in the bank located in the club premises. Similarly, accused no.3 who is said to have been organizing the game in another hall has stated that accused nos.309 to 312 being the authorities of the club got 5% commission from each gambler for allowing them to play cards in the club. The relative mahazar namas were prepared and were attested by the mediators. Thus, it is the case of the prosecution that the said club was being used as common gaming house and that the petitioners i.e., accused nos.309 to 312 who are the office bearers of the club being the persons having care and management of the said premises are guilty of the offence under Section 4 of the said Act.

5. The learned Senior counsel for the petitioner Sri T.Balireddy seeks quashing of these proceedings against the petitioners on two grounds. It is firstly contended by the learned counsel for the petitioner that the prosecution seeks to rely on the

presumption arising in view of the provisions in Section 6 of the Gaming Act to implicate the petitioners herein. It is urged that the presumption under Section 6 of the Act that where in any place , entered or searched, under the provisions of Section 5 of the Act, instruments of gaming are found , it shall be presumed that such place is used as common gaming house and the persons found therein were present there for the purpose of gaming although no game was actually seen by the police officer or any of his assistants. The contention is that in view of the provision in Section 7 of the Act, inasmuch as the premises in question were admittedly a club, the presumption under Section 6 of the Act cannot be raised.

6. It is true that under the facts and circumstances of the case and the provisions in Section 7 of the Act, the mere fact of seizure of instruments of gaming like cards etc. in itself would not lead to any presumption that the premises in question is a common gaming house inasmuch the said premises is a club.

7. There can be no dispute about this proposition. But, what is relevant is that in this case the prosecution does not rely merely on the presumption that can be drawn under Section 6 of the Act from the seizure of instruments of gaming from the club premises.

8. The case of the prosecution as elaborately mentioned in the charge-sheet is that firstly outsiders other than the members of the club are allowed into club for the purpose of participating in 'kothamukka' game by charging Rs.40/- per head as guest charges. Secondly, there is a specific allegation that the office bearers themselves for their personal benefit charge 5% from each participant in the game. Thus, it is not a case where the prosecution merely seeks to rely on the presumption that can be drawn under Section 6 of the Act for brining home the charge against the petitioners that they are occupiers and managers of common gaming house. Whether the prosecution is ultimately able to prove these allegations is a question of fact, which has to be determined during the trial.

9. The next contention of the learned counsel for the petitioners is that at any rate the prosecution must prove that the premises raided satisfy the definition of 'common gaming house as defined in sub-section (ii) of Section 2 of the Act which is reproduced below for reference:

'(ii) in the case of any other form of gaming, any house, room tent, enclosure, vehicle, vessel or any place whatsoever in which any 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, vessel, or place, whether by way of charge for the use of such house, room, tent, enclosure, vehicle, vessel or place or instruments of gaming or otherwise howsoever;'

10. The contention is that in the case of any other form of gaming like playing of game of chance with cards with stakes, there must be material to show that the premises in question were used for profit or gain of the person owning, occupying, using or keeping the said premises.

11. The further contention is that unless the prosecution satisfies the requirement of the definition of 'common gaming house' as stated above, Section 3 of the Act cannot be invoked at all.

12. The learned counsel for the petitioners relies on a decision of this Court in the case of K.RAMAMOHANA RAO AND ORS. v. STATE, 1997 (1) APLJ 15. It is obvious that the keeper or occupier of the premises would be punishable under Section 3 of the Act only when the premises satisfy the definition of 'common gaming house' as defined under Section 2(1) of the Act.

13. Coming to the facts and circumstances of the case, there is a specific allegation in the charge-sheet that the petitioners have been chagrining 5% commission from those participating in the game. It may be mentioned that according to the prosecution version, the raid on the premises was conducted when the actual game was going on. As already observed above, there is an allegation that certain profits were derived from the gaming and an amount of Rs.60,000/- towards profits was seized from the safe room.

14. Further explanation to section 2(1)(ii) of the Act provides that in the case of club, society or other association, the element of profit or gain is not necessary for satisfying the requirement of common gaming house in respect of the said premises. The said explanation is extracted below:

'Explanation:- For the purposes of sub-clause (ii), any premises or place belonging to or occupied by a club, society, or other association of persons whether incorporated or not, which is used or kept for purposes of gaming shall be deemed to be a common gaming house notwithstanding that there is no profit or gain for the club, society or other association of persons on account thereof;'

15. From this, it is obvious that one of the essential element for bringing any premises within the definition of 'common gaming house' is that not only that it should be used for gaming as defined in the Act but that the person owning the premises in question derives profit or gain by permitting such premises to be used for gaming or keeping the instrument of gaming. But, in view of the explanation to the said section, this requirement is dispensed with in respect of any place or premises occupied by a club, society or other association of persons. In the case of such premises belonging to a club, society or other association, it is enough if the place is used or kept for the purpose of gaming for bringing it within the ambit of common gaming house notwithstanding that there is no profit or gain for the club, society or other association of persons on account of it being used for gaming.

16. In this case, there is not only an averment in the charge-sheet and material in support of it that actual gaming was carried on in the premises of the club in question but there is also specific averment that certain profits were derived from gaming by the club. As stated above, whether these allegations would be made out or not is a matter which has to be determined during the trial.

17. Considering these circumstances, this does not appear to be a case where the proceedings can be quashed under Section 482 of Cr PC. In the result, this petition is dismissed.

18. In view of the fact that there is a large number of the accused in the case, it is open to the petitioners and other accused to make an application before the trial court for dispensing with their personal attendance and seek permission for being represented by any other accused or by their counsel. If such applications are made, the learned Magistrate shall allow them on such conditions as deemed proper.

19. The observations made herein shall not be treated as findings of fact which are required to be determined by the trial court.

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