

A. Bhaskar and ors. Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Dec-19-2002

Reported in : 2003(1)ALD(Cri)411; 2003(2)ALT125

Judge : B. Seshasayana Reddy, J.

Acts : Andhra Pradesh Gaming Act, 1974 - Sections 4, 9 and 12; Code of Criminal Procedure (CrPC) - Sections 251, 397 and 401

Appeal No. : Criminal Revision Case No. 241 of 2001

Appellant : A. Bhaskar and ors.

Respondent : State of A.P.

Advocate for Def. : Additional Public Prosecutor

Advocate for Pet/Ap. : K. Maheswara Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B. Seshasayana Reddy, J.

1. This is an application filed under Sections 397 and 401 of Criminal Procedure Code, to quash the judgments of both the Courts below, passed in S.T.C.No. 27 of

1995 on the file of the learned Judicial First Class Magistrate, Dharmavaram and in Crl. Appeal No. 46 of 1997, on the file of the learned Sessions Judge, Ananthapur to the extent of confiscation of seized amounts.

2. The petitioners, accordingly, prayed for a consequential direction to the respondent to refund the amounts seized from their possession to secure the ends of justice.

3. Before advertng to the question as to whether the impugned orders suffer from legal infirmity and as to whether the petitioners are entitled for refund of the amount as prayed for, it may be necessary to briefly notice relevant facts leading to filing of this petition.

4. The respondent-State challaned the petitioners and A-4 Hussain Peera (since died) before the learned Judicial First Class Magistrate, Dharmavaram, for the offence punishable under Section 4 of the A.P. Gaming Act. It is alleged in the petty case charge-sheet that the petitioners were found playing Matka on 27-1-1995 in the house of Annaguthi Obulesu of Bantalapalli village. The Inspector of Police, Dharmavaram Rural, apprehended the petitioners and A-4 Hussain Peera (sine died) and seized certain amounts from their possession. The learned Judicial First Class Magistrate took the petty charge-sheet on file as S.T.C. 27 of 1995. The case came to be closed for non prosecution and also by applying the decision of the Apex Court reported in 'Common Cause' a Registered Society through its Director v. Union of India and Ors., 1996 (2) ALT 27 (SC), and accordingly, the petitioners came to be acquitted. The learned Magistrate ordered confiscation of Rs. 50,062/- seized from the possession of the petitioners and A-4 Hussain Peera. Feeling aggrieved by the order of confiscation, the petitioners filed Criminal Appeal No. 46 of 1997 on the file of the learned Sessions Judge, Dharmavaram. The learned Sessions Judge by judgment dated 6-7-2000, dismissed the appeal confirming the order and confiscation of Rs. 50,062/-passed in S.T.C.No. 27 of 1995. Hence this revision.

5. The learned counsel for the petitioners contends that order passed by the learned Magistrate and the order passed by the learned Sessions Judge confirming the order of the trial Court suffer from incurable legal infirmities. It is

submitted that the order of confiscation of the amounts seized from the possession of the petitioners is unsustainable in law. He also placed reliance on the decision of this Court reported in Shaik Zaheer v. State of A.P., 2002(1) ALT (CrI.) 177 (A.P.) in support of his contention that 'for confiscation of the amount seized under Gaming Act the conviction of the petitioners is essential.

6. The learned Addl. Public Prosecutor submits that the lower Court and the Appellate Court considered the fact that the petitioners did not claim the amount when they were examined under Section 251 Cr.P.C, and therefore, the order passed by the lower Court and as confirmed by the lower Appellate Court with regard to the confiscation of the amount is legal and proper and it is not required to be interfered with in this revision.

7. It is required to be noticed that the judgment acquitting the petitioners of the charge punishable under Section 9 of the Act, has become final. Therefore, the only question that arises for consideration is as to whether the order of confiscation of the amount seized from the possession of the petitioners is sustainable in law.

8. Section 12 of the Act says that on conviction of any person under Section 9 of the Act, the convicting Magistrate may order:--

(1) all the instruments of game seized, shall forthwith be destroyed or forfeited,

(2) xxxxxxxxx

9. It is thus clear that the learned Magistrate is empowered to order forfeiture or destruction of all instruments of gaming seized on conviction of the individual under Section 9 of the Act.

10. The order of conviction alone would result in forfeiture of any of the instruments of game or destruction thereof. The conviction of the person under Section 9 of the Act is a condition precedent for ordering forfeiture or destruction of instruments of game seized by the police and produced before the learned Magistrate.

11. It has been held by this Court in the above decision (Citation-2 supra) that the money used as subject or means of gaming is instrument of gaming and it is liable for confiscation only on conviction of a person under Section 9 of the Act.

12. In the instant case the learned Magistrate having acquitted the petitioners herein of the charge punishable under Section 9 of the Act, ordered confiscation of the amount seized from them.

13. In the circumstances, there is absolutely no difficulty, whatsoever, to declare that the confiscation passed by the learned Magistrate and confirmed by the learned Sessions Judge, is totally untenable and not sustainable in law.

14. It is not in dispute that the amounts detailed herein have been seized from the possession of the petitioners. Indeed, a memo has been filed by the petitioners detailing the particulars. The amounts said to have been seized from the possession of the petitioners are as follows:

No of the petitioner Name of the petitioner/accused Amount claimed
and accused In rupees.

1. (A-1) A. Bhaskar 20,500/-
2. (A-2) Madamachi Gangappa 10,900/-
3. (A-3) Kamatham Nagaraju 2,620/-
4. (A-4) S. Hussain Peera 2,580/-
5. (A-5) S. Shaiksha 4,000/-
6. (A-6) Chinduluru Nagabhushanam 6,475/-
7. (A-7) Kolasani Krishna Murthy 1,900/-

8. (A-8) K. Shafiulla 1,087/-

15. In the circumstances the order passed by the learned Judicial Magistrate of First Class, Dharmavaram in S.T.C.No: 27 of 1995, dated 9-6-1996 ordering confiscation of the amounts seized from the possession of the petitioners, as confirmed in Criminal Appeal No: 46 of 1997 dated 6-7-2000 is set aside. Both the orders are accordingly quashed. Consequently, there shall be a direction that the petitioners are entitled for refund of the amounts as detailed in the preceding paragraph of the order.

16. Accordingly, this criminal revision case, is allowed.

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