

Shyam Lal Vs. State

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Court : Allahabad

Decided On : Aug-23-1967

Reported in : AIR1969All183; 1969CriLJ456

Judge : J.N. Takru, J.

Acts : [Public Gambling Act, 1867](#) - Sections 13

Appeal No. : Criminal Reference No. 37 of 1966

Appellant : Shyam Lal

Respondent : State

Advocate for Pet/Ap. : Ghanshiamnath Sharma, Adv.

Judgement :
ORDER

J.N. Takru, J.

1. This criminal reference has been made by the learned Sessions Judge of Mathura in the following circumstances.

2. According to the prosecution, Nur Singh Dutt. Head Constable, and the other prosecution witnesses saw Shyam Lal accused writing down some numbers on a piece of paper and Har Prasad accused offering two annas on number 98, When

the latter saw the police they took to their heels. They were, however, arrested and from the possession of Shyam Lal two parchas with some numbers written on them, two pieces of cardboard, a pencil, and Rs. 2.25 were recovered, while from the possession of Har Prasad eight annas were recovered. On these allegations Shyam Lal and Har Prasad were prosecuted under Section 13 of the Gambling Act and were convicted and sentenced to a fine of Rs. 150 in default to one month's R. I. each. As the case was tried summarily Shyam Lal went up in revision to the Sessions Judge, Mathura, who feeling satisfied that the examination of the accused under Section 342 Cr. P. C. was not conducted in accordance with law and had resulted in prejudice to him made the aforesaid reference to this Court.

3. After perusing the judgment and the explanation of the learned Magistrate I am satisfied that apart from the ground on which this reference has been made the conviction and sentence of Shyam Lal cannot be defended on merits either, as all that the prosecution evidence shows is that he was making preparation for gambling, the preparation consisting in Har Prasad offering two annas on No. 98 to the applicant. But the mere offer and acceptance of the bet assuming that the two annas were given as such would not show that Shyam Lal and Har Prasad were gambling, though as stated above, it might show that they were making preparation for gambling. The stage of gambling would have been reached when either party did something which would have decided whether the bet was won by Shyam Lal or Har Prasad and still then the parties can only be said to have made preparation for gambling. Section 13 of the Gambling Act however, does not make preparation for gambling an offence. As such Shyam Lal could not be convicted thereunder. The result therefore is that the conviction and sentence of Shyam Lal cannot be sustained. I accordingly accept the reference not only on the ground on which it was made by the learned Sessions Judge but also on the additional ground mentioned above, quash the judgment and order of the learned Magistrate referred to above and while ordering the acquittal of Shyam Lal direct that the fine if paid shall be refunded to him.