

Qadir Vs. State

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Court : Allahabad

Decided On : Mar-04-1959

Reported in : AIR1959All799; 1959CriLJ1397

Judge : M.C. Desai, J.

Acts : [Public Gambling Act, 1867](#) - Sections 1, 3, 4 and 13; Uttar Pradesh Public Gambling (Amendment) Act

Appeal No. : Criminal Revn. No. 1302 of 1957

Appellant : Qadir

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Daya Shanker Tewari, Adv.

Judgement :
ORDER

M.C. Desai, J.

1. The applicant has been convicted under Section 13, Gambling Act. A person is guilty under Section 13, Gambling Act if he is found gaming in a public place. The shop of Babu in which the applicant is said to have been found gaming may be

taken to be a public place, but the question is whether there is any evidence to prove that the applicant was found gaming. Gaming, means wagering or betting. The conviction rests on the evidence of two eye-witnesses H. C. Raghubar Singh and Sohan Pal. What they stated is simply this that they saw satta gambling being indulged in by the applicant with Babu, that Babu wrote something on a slip of paper at the dictation of the applicant and that three slips of paper were recovered from the possession of Babu.

The slips contain nothing but figures; some figures are mere numbers and others are of amounts of money; no name is written anywhere. The writing on them makes no sense or conveys no idea and, therefore, by itself can prove nothing; it certainly does not prove that any betting or wagering was done by the applicant with Babu or anyone else. The two eye-witnesses also did not state that the applicant did any betting or wagering with Babu; their statement that gambling was going on or that the applicant dictated 'satta' to Babu which he reduced to writing is too vague to be acted upon.

Neither of them deposed about the words used by Babu and the applicant; what they stated is the effect produced on their minds by the words used by them. The words uttered by the applicant and Babu would be the real evidence and it would be for the Court to interpret them and determine whether they amount to betting or wagering. The effect produced by them on the minds of the witnesses was wholly irrelevant and inadmissible in evidence, it was not for them to judge whether the applicant was betting or not. Therefore, legal evidence is lacking and the applicant should not have been convicted at all by the courts below.

It was their duty to see whether there was legal evidence to prove that the applicant was wagering or betting; they should not have surrendered their judgment to the police and convicted the applicant simply because the police prosecuted him for public gambling.

2. The appellate court relied upon *Emperor v. Basant Lal*, : AIR1941 All330 . It did not realise that it dealt with a case governed by Sections 3 and 6 of the Public Gambling Act, whereas the present case is governed by Section 13. Slips of paper bearing figures like the ones in this case are instruments of gaming only if they are

proved to have been used as 'a means or appurtenance of, or for the purpose of carrying on, or facilitating, gaming.' Any writing material, whether a piece of paper or a pencil, which is not generally used as 'a means or appurtenance of' etc., is not an instrument of gaming merely because it can be used as such in a particular case; it may be one if it is proved to have been used actually as such.

If an article can be used only (or even mainly), as a means or appurtenance of, or for the purpose of carrying on, or facilitating, gaming, it may be held to be an instrument of gaming even in the absence of evidence of its actual use in connection with gaming, but an article which can as well be used for purposes other than those of gaming, such as a piece of paper or a pencil, cannot be held to be an instrument of gaming in the absence of its actual use in connection with gaming. The word 'use' means 'used generally or in a particular case'.

The slips recovered in the present case have not been proved to have been used as a means or appurtenance of, or for the purpose of carrying on, or facilitating, gaming; as a matter of fact no connection between them and gaming in any manner has been proved and it cannot be assumed without any basis that they are instruments of gaming. There is no evidence of any betting or wagering and the slips, without evidence of their having been used for the purpose of betting or wagering, are useless. There is no evidence whatsoever that the figures on them are of bets; they may be of anything.

If the slips are a record of bets (it is not suggested what else they are), they are nothing but documentary evidence of gaming and are no more instruments of gaming than any other evidence of gaming, such as a statement that gaming took place. Evidence of gaming cannot possibly be an instrument of gaming because evidence of gaming comes into existence after the gaming; an instrument of gaming must be an article which has been of some use in the course of gaming. Gaming is over as soon as a bet is made; no slips are required for making a bet or for accepting it. They may be used after the betting is over to record the bets, but they would not thereby become instruments of gaming. Betting slips & books are not instruments of gaming: see Stone's Justices' Manual, P. 946. quoting *R. v. Willcock*, (1889) 54 J.P., 9. Anything that is used in connection with gaming is not

necessarily an instrument of gaming; in *Watson v. Martin*, (1865) 34 L.J. M.C. 50, it was held that a coin used in a gaming called 'half-pence,' in which betting is done upon the number of 'heads' or 'tails' the coin comes down on being tossed, was not an instrument, of gaming within the meaning of the Vagrant Act, 5 George IV, C. 83. In *Hirst v. Molesbury*, (1870) 6 Q.B. 130, it was held that a half sovereign used as a wager was not an instrument of gaming. There are a number of authorities laying down that money found in the pool is not an instrument of gaming. Therefore, the slips cannot be said to be the instruments of gaming even if they are proved to have been used in connection with betting, i.e. to record the bets or for any other purpose.

3. The recovery of instruments of gaming is relevant only if the offences of Sections 3 and 4 are to be proved by presumption; public gambling punishable under Section 13 is to be proved by evidence and no question of presumption arises. The recovery of instruments of gaming may be circumstantial evidence to prove public gambling, but is not conclusive and may not be considered enough in certain circumstances.

4. The slips were recovered from the possession of Babu; even if they had been proved to be instruments of gaming, the applicant could not be convicted in the absence of any connection arising out of gaming between him and the slips. The possession of the slips might have been evidence against Babu and Babu's conviction might have been justified on account of his possession but not that of the applicant.

5. I set aside the applicant's conviction and sentence and acquit him. The fine, if realised, shall be refunded.

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