

State of U.P. Vs. Ganga Ram and ors.

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SooperKanoon Citation : sooperkanoon.com/475231

Court : Allahabad

Decided On : Oct-13-1971

Reported in : 1972CriLJ1221

Judge : H.N. Seth, J.

Appellant : State of U.P.

Respondent : Ganga Ram and ors.

Advocate for Def. : Sri. Rajeshji Verma

Judgement :

H.N. Seth, J.

1. This is an appeal against an order of the Sub-Divisional Magistrate Kasgan.i. dated 20th of July 1968, purporting to discharge the respondent while trying him for an offence under Section 13 of the U. P. Public Gambling Act.

2. Proceedings for the prosecution of the respondents, for an offence under Section 13 of the U. P. Public Gambling Act, were initiated on the basis of a charge-sheet dated 17th of March, 1968. Allegation made against the respondents was that on 6th of January 1968 at about 11.30 a.m. they were found gambling at a place near the public road leading to Chandanpura. When the respondents appeared before the Court, they were questioned about the offence said to have

been committed by them. They denied the prosecution allegations. According to the papers produced by the prosecution, the place where the gambling was said to be going on was a part of a field in which Mattar crop was standing.

3. After statements of the respondents were recorded. but before the prosecution could produce any evidence, the respondents raised a preliminary objection contending that the Mattar field where they were said to be gambling was not a public place within the meaning of U. P. Public Gambling Act and therefore the prosecution was misconceived. The plea raised by the respondents found favour with the learned Sub-Divisional Magistrate who relying upon the case of *Munshi v. State* reported in : AIR1954 All356 . held that the place where according to the prosecution, the respondents were found gambling, was not a public place within the meaning of U. P. Public Gambling Act. In the result the Sub-Divisional Magistrate made an order discharging all the accused persons.

4. Being aggrieved by that order. the State of U. P. has filed the present appeal under Section 417 of the Code of Criminal Procedure.

5. When the appeal was taken up for hearing. Sri Rajeshji Verma, learned Counsel for the respondents, raised a preliminary objection as to its maintainability. He contended that the order of the Magistrate, dated 26th July 1968, purports to be an order of discharge. It is not an order acquitting the respondents of any offence. No appeal under Section 417 Criminal P.C. therefore lies against such an order. Learned counsel appearing for the State, on the other hand, contended that the order dated 26th July 1968, though termed as an order of discharge, is in fact an order of acquittal and therefore an appeal against such an order lies under Section 417 Cr. P.C.

6. The case was being tried as a summons case. Chapter XXII of the Code of Cr. Procedure provides for the procedure to be adopted in such cases. In this Chapter there is no provision for making an order of discharge. According to these provisions, when the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted. For this purpose it shall not be necessary to frame a formal charge against him. In the

case before me, the procedure so far was adopted. The Code further provides that in a case where the accused does not admit his guilt, the Magistrate is to proceed under Section 244 of the Code i. e. he is to hear the complaint if any or call for such evidence as may be produced in support of the prosecution and also to hear the accused and take such evidence as he may produce in his defence. After this has been done, Section 245 provides that the Magistrate may either acquit or convict the accused, In this case, before the prosecution could adduce evidence in support of its case, accused persons raised a preliminary objection which prevailed with the Magistrate, with the result, the stage for making an order of acquittal or conviction under Section 245 was never reached. Section 249 of Code of Criminal Procedure provides that in a case instituted otherwise than upon a complaint, a magistrate of the 1st Class may for reasons to be recorded by him, stop the proceeding at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused. Learned counsel for the respondents urged that the impugned order is one which is covered by the provisions of Section 249. Such an order as expressly provided in the explanation to Section 403 Criminal P, C. is not an order of acquittal and therefore no appeal lies against it under Section 417 Cr. P.C.

7. Contention of learned Counsel for the State, on the other hand, is that the order purports to pronounce that in law no offence had been made out against the respondents and though worded as an order of discharge it is in fact an order of acquittal.

8. As stated earlier, provisions relating to trial of summons cases' nowhere provide for making of an order discharging an accused, after he has been summoned to appear before the Court. The question, therefore, that arises for consideration is whether the impugned order should be interpreted to be an order made under Section 245 Criminal P.C. acquitting the accused, or an order made under Section 249 of the Code, stopping proceedings without pronouncing any judgment either of acquittal or conviction.

9. We find that in this case, the prosecution evidence was not adduced and therefore, the stage for making an order under Section 245 Criminal P.C. did not

reach. On the other hand, an order under Section 249 could be made at any stage. The court, herefore, had jurisdiction to make an order under Section 249 Cr. P.C. at that stage. Wordings of Section 249 Cr. P.C. are quite wide and they appear to cover even such a case where a Magistrate is of opinion that on the facts as alleged by the prosecution no offence is made out against the respondents. In such a case it would not be reasonable to compel a Magistrate to waste public time by receiving prosecution evidence and thereafter to pass an order acquitting the accused irrespective of what that evidence may be. I am, therefore, of opinion that if a Magistrate, even before taking evidence on behalf of the prosecution, comes to the conclusion that even accepting prosecution allegations no offence in law is made out against the accused, he can appropriately make an order under Section 249 of the Cr. P.C.

10. In the result, I find that in this case, on the one hand the stage for making an order of acquittal under Section 245 Cr. P.C. did not arise; on the other hand, an order stopping proceedings under Section 249 of the Cr. P.C. could be passed. Effect of an order discharging the accused, in the circumstances of the case, in substance is the same as an order dropping proceedings, against them and directing them to be released. Reasons for making the order have also been stated. In the circumstances, if the order in question is to be interpreted, it should be interpreted as an order made under Section 249 Cr. P.C. and not one made under Section 245 Cr. P.C. As provided in the explanation to Section 403 Cr. P, C. an order under Section 249 Cr. P.C. cannot amount to an order of acquittal. No appeal, under Section 417, therefore, lies against such an order. Preliminary objection raised oh behalf of the respondents therefore prevails.

11. The appeal fails and is , dismissed as not maintainable Appeal dismissed.