

Jwalaprasad and ors. Vs. State of V.P.

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Court : Madhya Pradesh

Decided On : Jan-17-1953

Reported in : 1953CriLJ985

Judge : Krishnan, C.J.

Appellant : Jwalaprasad and ors.

Respondent : State of V.P.

Judgement :

ORDER

Krishnan, C.J.

1. This is a reference made by the Additional District and Sessions Judge, Rewa on an application in revision made by some of the accused in a pending case before the Magistrate of Rewa. The grounds are : Firstly, that it was illegal for the Magistrate to have called under Section 10, Public Gamoling Act, as witnesses, two of the persons found in the house during the search and brought before him as accused; secondly, that at all events in the present case, having already pleaded not guilty when examined under Section 242, Criminal P.C. they should not be called to support the prosecution; and, thirdly, even if it was legal to examine them, the proper stage was when they are produced before the Magistrate, and not later on.

2. As a general principle, this Court does not approve of revision applications, or references by subordinate Courts on such matters, during pendency of a proceeding. The competency of a witness, and the admissibility into evidence of any fact, is a matter which the trying Court should decide then and there. The party affected may note its objection, if any. But it need not, and normally, it would be very ill-advised to, run forthwith to the superior Courts questioning the correctness of the lower Court's ruling. The adverse final decision, if any, can always be challenged in appeal or revision, as the case may be inter alia on the ground that it is based on inadmissible matter, or the evidence of a legally incompetent witness. It is obviously not conducive to prompt disposal of judicial work if parties in pending cases or even sessions judges approach the High Court for guidance on such points arising in pending-cases; which for the time are entirely within the discretion of the trying Court.

3. Any way, this reference having been made, and some delay having occurred, because of a comparative simple question, it is convenient in this case to answer it even at this stage. Section 10 of the Public Gambling Act like all such special provisions must be interpreted strictly. If the search or raid, during which the person is found in the house or other place, is itself in non-compliance with the provisions of that Act, he cannot be examined. This is principle of the decision reported in - *Maruti Sakru v. Emperor* A.I.R. 1944 Nag. 328 (A). But if the person is found in the house or other place searched or entered, according to the provisions of the Public Gambling Act, then he can certainly be examined. The grievance urged here is not that the entry having been made without regard to the provisions of the Act, the persons should not be examined; but it is that they should not be examined at all, at any rate at this stage; or, are rendered incompetent for this examination by that plea of not guilty.

4. Firstly, the persons found in the house or other place, upon entry by the police will in due course be brought before the Magistrate and will be the accused in most cases; still he is liable to be examined on oath. Whether he is going to deny all knowledge, or refuse to give evidence against himself, or voluntarily implicate himself is to be seen after the oath is administered to him. He is certainly entitled to the benefit of Article 20(3) of the Constitution; but the co-accused have nothing

to do with it.

5. Secondly, such person's having pleaded not guilty has no bearing on this liability to be examined; but it concerns the value of the evidence that he might give. If he does voluntarily implicate himself, Section 30, Evidence Act would be applicable, though the position of such a witness is somewhat stronger because of the right of the co-accused to cross examine him. At this stage, we are concerned with the question, whether the persons can be examined as witnesses, and not with the value the Court might give to his evidence, if any.

6. Thirdly, there is nothing in Section 10, Public Gambling Act to indicate that such persons can be examined, if at all, immediately on his production before the Magistrate and not later. The section reads,

It shall be lawful for the Magistrate before whom any person shall be brought etc. etc. to require any persons to be examined on oath'. In fact, para. 2 makes it further clear still that the examination may be at any subsequent stage in which the prosecution evidence can be adduced, and before any Magistrate That can legally try the case.

7. The result is that the application of these accused is without substance and reference is answered accordingly.