

Bharamanand Vs. State

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Court : Madhya Pradesh

Decided On : Sep-27-1956

Reported in : 1957CriLJ284

Judge : Chaturvedi, J.

Appellant : Bharamanand

Respondent : State

Advocate for Pet/Ap. : Mr. Ojha

Judgement :

Chaturvedi, J.

1. The petitioner has been convicted by the Municipal Magistrate, Indore, under Section 12 of the Madhya Bharat Gambling Act (No. 51 of 1949) for the offence of gaming in a Public street. He has been fined Rs. 25/-. The order also added that the money recovered from the Possession of the accused (petitioner) should be forfeited and sent to the Treasury. The petitioner went in appeal but the learned Third Additional Sessions Judge, Indore, dismissed this appeal. So he has come in revision to this Court.

2. The only point pressed by Mr. Ojha, learned Counsel for the Petitioner, is that the Courts below were in error in passing an order of confiscating the money found

with the accused as there was no evidence to show that it was connected in any way with the commission of the crime and there is nothing on record to justify a presumption that it was an instrument of gaming or money received as bet.

3. Mr. Ojha places reliance on the wording Of Section 12 of the Act, the material portion of Which is as follows:

Section 12 (1) : - A Police Officer may apprehend and search without warrant any person found gaming or reasonably suspected to be gaming in any public street, thoroughfare or in any place to which the public have or are permitted to have access.

Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding Rs. 50/- or to imprisonment either simple or rigorous for any term not exceeding one calendar month.

(2) And such police officer may seize all things reasonably suspected to be instruments of gaming found in such public street, thoroughfare or place or on or about the person of those whom he shall so arrest and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed. etc.

4. Mr. Ojha contends that the Magistrate can only order instruments of gaming to be destroyed. There is no provision in tills section for forfeiting or confiscating the money found to be in possession of the person gaming in a public street.

This contention seems to be well-founded; as the wording of this section is different from Section 7 which deals with the conviction for offences of opening, keeping or using a gaming house, or for an offence of being present therein for the purpose of gaming, or gaming therein. This section is reproduced below:

On conviction of any person for opening, keeping or using any such gaming house, or being present therein for the purpose of gaming, or gaming therein, the convicting Magistrate may order all the instruments of gaming found therein to be forthwith destroyed or forfeited and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to

be forfeited or in his discretion, may order any part thereof to be paid to any person appearing to be entitled thereto.

It will be clear that the Legislature in this section has used two words, 'destroyed' as well as 'forfeited' and obviously these two words mean two different things. The learned Government Advocate thinks that the word 'destroyed' includes the word 'forfeited.' but I do not agree with him on this point. The word 'forfeit' implies that the thing forfeited is taken from the possessor and given to the Government. Forfeiture is a loss of the right to Possess, but the thing as such is allowed to exist. It remains with the Government instead of with the possessor; the possessor loses his right of its possession. The word 'destroyed', on the other hand, means 'to demolish', that is, 'to reduce to nothing'. In other words, the word 'destroy' means to render a thing useless for the purpose for which it was intended. If money is to be destroyed it will mean that it will be so destroyed that it will be rendered useless for the purpose for which it was intended, that is, it will be rendered useless for the Government as well as for the accused. So, the word 'destroyed' cannot include the word 'forfeited'.

The two words connote different things. I am, therefore, of the opinion that the word 'forfeited' in Section 7 of the Act is used only for money & the word 'destroyed' for instruments of gaming. As the word 'forfeited' is not used in Section 12, the money found in possession of the accused cannot be forfeited. In this view of the matter, the order of the Magistrate for forfeiture of the money found in possession of the accused Petitioner is erroneous and must be set aside.

5. Section 12 of the Madhya Bharat Gambling Act is somewhat similar to Section 13 of the Public Gambling Act (3 of 1867), and there also the provision is that 'the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed'. The Allahabad view consistently has been that by no stretch of imagination can money be regarded as among the instruments of gaming See *Harihar v. Emperor* AIR 1938 All 11 (A); *Radhey Lal v. Emperor* AIR 1938 All 252 (B).

In *Ballu Singh v. Emperor* AIR 1938 All 209 (C), Allsop J., observed that although a Magistrate convicting certain persons under 8, 13, Public Gambling Act, has no

power to direct confiscation of the money found on the Phar QM and produced in the Court, such money not being an instrument of gaming, he has authority to order confiscation of money under Section 517, Cr. P. C. In that case the money was found not in possession of the accused but on the Phar and it was observed that the Magistrate probably was unable to say to which of the accused it belonged.

Therefore, the order of confiscation was held; to be legal. This circumstance does not exist in the present, case. I would, therefore, hold that under Section 12 of the Madhya Bharat Gambling Act in the present case money found in the possession of the accused cannot be forfeited.

6. The revision is, therefore, allowed; the orders of the Magistrate and that of the learned Additional Sessions Judge, Indore regarding forfeiture of money are set aside. Money found in the possession of the petitioner will be refunded.

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