

Bhola Vs. Secretary, Deptt. of Home, Govt. of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Jul-04-2002

Reported in : 2003CriLJ4046

Judge : Arun Mishra, J.

Acts : Madhya Pradesh Suraksha Adhiniyam (1990) - Sections 4 and 6; [Public Gambling Act, 1867](#) - Sections 4A; Madhya Pradesh State Amendment Act, 1976 - Sections 4A

Appeal No. : W.P. No. 2969 of 2002

Appellant : Bhola

Respondent : Secretary, Deptt. of Home, Govt. of M.P. and ors.

Advocate for Def. : Sanjay K. Agrawal, Adv.

Advocate for Pet/Ap. : Maninder Bhatti, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Arun Mishra, J.

1. Petitioner seeks writ of certiorari to quash the order of his externment passed by the District Magistrate, Sagar (Annexure P/1) on 14-3-02 from district border of Sagar for a period of six months. An appeal was preferred by the petitioner before the Government of M. P.; that has been dismissed as per order P/2 on 27-5-02; hence the present writ petition.

2. The solitary ground on which the petitioner assails the order passed by the District Magistrate and State of M. P. is that the convictions have been made the basis of externment while passing the order under Section 6 of M. P. Suraksha Adhiniyam, 1990. All the convictions relied upon are under Section 4A of [Public Gambling Act, 1867](#) as added by M. P. State Amendment Act No. 47 of 1976. Petitioner's case is that he has not been convicted for an offence under Section 3/4 of Public Gambling Act thrice within three years. Petitioner's submission is that offence under Sections 4 and 4A are different, thus, petitioner's externment could not be ordered under Section 6(c) of M. P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as 'the Act').

3. The respondents in their return submit that petitioner has indulged himself in activities in relation to Satta; he was served a show, cause notice under Section 6 of the Act: 6 covers conviction under Section 4A also as it mentions conviction under Sections 3 and 4 to be the grounds of externment. Petitioner was convicted five times for indulging in Satta and two cases are still pending, hence the order calls for no interference. Documents have been filed collectively as Annexure R/1 indicating the conviction of the petitioner under Section 4A of Public Gambling Act.

4. Learned counsel for petitioner submits that the order is illegal and arbitrary; Section 6 prescribes limited grounds for passing the order of externment. Three times conviction under Section 3 or 4 of [Public Gambling Act, 1867](#) is the requirement; offence under Section 4 is an independent offence and offence under Section 4A as inserted by M. P. Amendment Act is a different offence, thus, order of externment based on five times conviction under Section 4A is not permissible as Section 6 of the Act does not include the offence under Section 4A as inserted by M. P. Amendment as a ground for externment.

5. Shri Sanjay K. Agarwal, learned counsel for the State submits that the intention : of the legislature has to be gathered as three times conviction under Section 4 itself has been made ground of externment under Section 6(c) of the Act as such it has to be held that conviction under Section 4A is also one of the ground contemplated under Section 6 of the Act. So as to make effective the provision wider interpretation should be adopted. Section 6 of M. P. Rajya Suraksha Adhiniyam, 1990 reads as under:--

'6. Removal of persons convicted of certain offences -- If a person has been convicted--

(a) of an offence--

(i) under Chapter XII, XVI or XVII or under Section, 506 or, 509, of the Indian Penal Code, 1860 (45 of 1860); or

(ii) under the Protection of Civil Rights Act, 1955 (22 of 1955); or

(b) twice, of an offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956); or

(d) thrice, of an offence within a period of three years under Section 3 or 4 of the [Public Gambling Act, 1867](#) (3 of 1867), in its application to the State of M. P.;

the District Magistrate may, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route and within such time as the District Magistrate may order and not to enter or return to the District or part thereof or such area and such contiguous district or part thereof; as the case may be, from which he was directed to remove himself.'

Explanation: For the purpose of this section, the expression, 'an offence similar to that for which he was convicted' means--

(i) in the case of a person convicted of an offence mentioned in Clause (a), an offence falling under any of the Chapters or Sections of the Indian Penal Code, 1860 (45 of 1860), mentioned in that clause or an offence falling under the provisions of the Act mentioned in Sub-clause (ii) of that clause; and

(ii) in the case of a person convicted of an offence mentioned in Clauses (b) and (c), an offence falling under the provisions of the Acts mentioned respectively in the said clauses.

6. It is apparent that the Act covers conviction under Sections 3 and 4 only, not under Section 4A.

7. After hearing learned counsel for the parties as this fact is not in dispute that petitioner was convicted five times under Section 4A of Public Gambling Act as inserted by M. P. Amendment, in my opinion, when such a conviction has not been made a ground under Section 6 of the Act, same cannot be held included in Section 6 by mere reference to Section 4 which is an independent provision than Section 4A.

8. Section 6 of the Act prescribes the grounds for externment if a person has been convicted of an offence under Chapter XII, XVI or XVII or under Section 506 or 509 of IPC, under the protection of Civil Rights Act, 1955, twice, of an offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 and, thrice, of an offence within a period of three years under Section 3 or 4 of the [Public Gambling Act, 1867](#) (3 of 1867), in its application to the State of M. P. District Magistrate can order externment if he has reason to believe that such a convict person is likely to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof or such area and any district or districts or any part thereof. Explanation makes it further clear that the expression 'an offence similar to that for which he was convicted' means in the case of a person convicted of an offence mentioned in Clause (a) and under any of the said clauses. Clause (c) of Section 6 specifically mentions conviction thrice, of an offence within a period of three years under Section 3 or 4 of the [Public Gambling Act, 1867](#) which is not the factual situation obtainable in the instant case.

Petitioner has not been convicted for offence under Section 3 or 4 within three years period or even earlier thereto. When once the action has been initiated under Section 6 of the Act, prerequisite is convictions as per requirement of Clauses '(a), (b) and (c) of Section 6 which is not available in the instant case.

9. Section 4 of [Public Gambling Act, 1867](#) reads as under:--

'4. Penalty for being found in gambling house : Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters money or other instruments or gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code (45 of 1860), for any term not exceeding one month; and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.'

10. Section 4A has been inserted by M. P. Amendment made in the year 1976 which reads as under :--

'4A. Punishment for printing or publishing digits, figures, signs, symbols or pictures relating to Worli Matkas or other form of gaming.-- (1) Whoever prints or publishes in any manner whatsoever any digits or figures or signs or symbols or pictures or combination of any two or more of such digits or figures or signs or symbols or pictures relating to Worli Matka or any other form of gaming under any heading whatsoever or by adopting any form or device, or disseminates or attempts to disseminate or abets dissemination of information relating to such digits or figures or signs or symbols or pictures or combination of any two or more of them shall be punishable with imprisonment which may extend to six months and with fine which may extend to one thousand rupees.

(2) Where any person of accused of an offence under Sub-section (1), any digits or figures or signs or symbols or pictures or combinations of any two or more of such digits or figures or signs or symbols or pictures in respect of which the offence is alleged to have been committed shall be presumed to relate to Worli

Matka gaming or some other form of gaming unless the contrary is, proved by the accused.'

11. A reading of Sections 4 and 4A above-quoted makes it clear that the offences are independent, in nature. District Magistrate has not chosen to take an action under Section 5; action has been taken under Section 6. Requirement of Section 5 is different than Section 6 as such, in my opinion, the order is absolutely illegal and bad in law. The orders Annexure P/1 and P/2 deserve to be quashed.

12. Resultantly, the writ petition is allowed. The orders Annexures P/1 and P/2 are quashed.

13. In the circumstances of the case, parties to bear their own cost.

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