

The State Vs. Rajinder Singh

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Court : Punjab and Haryana

Decided On : Jul-22-1971

Reported in : 1973CriLJ145

Judge : Gopal Singh, J.

Appellant : The State

Respondent : Rajinder Singh

Judgement :

ORDER

Gopal Singh, J.

1. This is recommendation dated June 24, 1969 under Section 438 of the Code of Criminal Procedure by Shri K.S. Tiwana. Additional Sessions Judge, Amritsar In a revision petition filed on behalf of the State against Rajinder Singh convicted under Section 13 of the Punjab Public Gambling Act, 1867, hereinafter called 'the Act' and sentenced to fine by the judgment of the trial Magistrate dated June 19. 1968.

2. Before the trial Magistrate. It was claimed on behalf of the State that the sum of Rs. 1,000 recovered from the gambling place, where Rajinder Singh and other accused persons were gambling, be forfeited to the State. The trial Magistrate refused to forfeit that amount and directed that the same be returned to Rajinder Singh accused, respondent in the revision petition. The Additional Sessions Judge

has recommended that the order of the trial Magistrate directing payment of Rs. 1,000/- recovered from the gambling place be set aside and the amount be not returned to the respondent and be forfeited to the State. The main point, which prevailed with the Additional Sessions Judge in making the recommendation for its being forfeited to, the State is that the respondent in his defence did not claim the sum of Rs. 1,000/- recovered from the gambling place to be his own. The recommendation made by the Additional Sessions Judge that the amount be forfeited to the State is unwarranted in law. The only provision of law relied upon by the counsel for the State, under which power of confiscation could be exercised in favour of the State is Section 8 of the Act That Section runs as follows:

On conviction of any person for keeping or using as such common gaming house or being present therein for purposes of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, 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 returned to the persons appearing to have been severally thereunto entitled.

3. Power for forfeiture of instruments of gaming, other articles and moneys seized from a common gaming house being kept or used for the purpose of gaming could be exercised only on conviction, when any person is found keeping or using any such common gaming house or is found to be present therein for the purpose of gaming. Penalty could be imposed on conviction for owning or keeping or for having charge of a gaming house under Section 3 of the Act. An accused person could also be found guilty and fined for being found for the purpose of gamins in a gaming house under Section 4 of the Act. In the present case, the respondent was convicted only under Section 13 of the Act for having been found gaming in a public place and punished accordingly. Power of forfeiture of the money seized could be exercised under Section 8 of the Act only, if an accused person has been convicted under Section 3 or Section 4 of title Act but not if he has been convicted under Section 13 of the Act. Thus Section 8 does not confer any power upon the Magistrate convicting an accused person for offence under Section 13 of the Act to

forfeit money or other articles recovered from a gaming place. Shri N.S. Bhatia appearing on behalf of the State having not succeeded in pointing out to any Section in the body of the Act empowering a Magistrate convicting an accused person under Section 13 of the Act to forfeit the money recovered, as in the present case, from the place, where the accused was found gaming, sought shelter behind the provision of Section 517 of the Code of Criminal Procedure. The relevant Sub-section (1) of Section 517 of the Code runs as follows:

(1) when an inquiry or a trial In any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof! or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

4. This Section apart from providing that any property produced before court or in respect of which any offence has been committed, be delivered to a complainant or an accused person or to any other person entitled to its possession, does also mention that the property may be confiscated by the State. In order that power of confiscation may be exercised by a Magistrate under Section 517. there must be aliened to that Section some provision of law authorizing the Magistrate on conclusion of an inquiry or trial to confiscate or forfeit the same. In the light of the above discussed scope of Section 8 at the Act, there does not exist any power of confiscation or forfeiture of the money to the State on the respondent having been convicted under Section 13 of the Act and not either under Section 3 or under Section 4 of the Act. There does not inhere in the trial Magistrate any power to forfeit the money said to have been seized in the present case from the gambling place in the absence of any specific power of confiscation conferred upon a trial Magistrate, no power of confiscation could be exercised by a Magistrate under Section 517 of the Code in case of conviction under Section 13 of the Act.

5. For the foregoing reasons. I decline to accept the reference and uphold the order of the trial Magistrate dated June 19, 1968 directing the return of the sum of Rs. 1,000 to the respondent.

