

Yash Pal Sharma Vs. State

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Court : Delhi

Decided On : Sep-04-1992

Reported in : 1993CriLJ1113; 1992(3)Crimes690; 1992RLR474

Judge : Usha Mehra, J.

Acts : [Delhi Public Gambling Act, 1955](#) - Sections 2(3)

Appeal No. : Criminal Revision Appeal No. 257 of 1980

Appellant : Yash Pal Sharma

Respondent : State

Judgement :

Usha Mehra, J.

(1) By this Revision, petitioner wants conviction and sentence passed by Shri D.N. Kadian, M.M. Delhi, and confirming order passed by Sh. G.S. Dhaka, Additional Sessions Judge, Delhi, be set aside.

(2) Brief facts are that the petitioner was standing at the Railway Station Shahdara, Along with three persons. According to prosecution all the four persons were gambling on the platform when apprehended. Other three co-accused pleaded guilty, but the petitioner pleaded not guilty and claimed trial. All the witnesses examined by the prosecution are official/police witnesses. There is no

independent witness associated with the same. Trial Court believed the prosecution story and found him guilty and sentenced him to R.I. for one month and fine of Rs. 300.00, in default of payment of fine 15 days S.I. Additional Sessions Judge did not find merit in the appeal and dismissed the same. The petitioner herein contends that the prosecution witnesses admitted that the petitioner was not playing the cards. He was simply standing at the platform and this fact finds corroboration from the cross examination of Raj Dutt, PW-1. Raj Dutt admits that when the petitioner was apprehended and his search was conducted nothing was recovered. Public Witness .-I, further admits that petitioner was not playing cards. He was only standing by the side of those who were playing. He also admitted that on personal search of the petitioner a railway pass was recovered from him which was from Shahdara to Delhi. Similarly Asi Hukam Singh, PW-2, admitted in his cross-exam, that he did not see cards in the hands of the petitioner. He also admitted that from platform No. 1 platform No 2 where the petitioner and his co-accused were standing every thing was visible. He further admitted that other- co-accused of the petitioner were playing cards but he presumed that since he was standing therefor, he must have been playing the cards. Since it was not the time for any train to cross Shahdara Railway Station, therefor he presumed that the petitioner could not be a passenger. Admittedly no independent witness has been associated in this case, though all the witnesses admit that the passengers were standing on platform No. 2 where the petitioner and his co-accused were arrested. It is in this background that the petitioner contends that he has been falsely implicated. Merely because he was standing at the platform, he could not have been held guilty of any offence.

(3) The Trial Court did take note of the fact that the petitioner when apprehended was only standing by the side of those three persons who were playing the cards. He also took note of the fact that no cards were recovered from the petitioner. Inspire of these facts having come on record the trial Court convicted the petitioner by placing reliance on S 4(2) of the [Delhi Public Gambling Act, 1955](#) (the Act).

(4) I am afraid the Trial Court has misconstrued the provisions of the Act and wrongly placed reliance on S. 4(2) of the Act. S. 4(2) of the Act contemplates a situation where a person is found in any 'common gaming house'. In that

eventuality he shall be presumed to be participating in the same : [S. 4(2) & S. 2(iii) are then reproduced].

(5) The reading of Section 2(iii) makes it clear that the provision of 'common gaming house' would be attracted only if any Instrument of gaming are kept or used for gaming purpose in any house, room, tent, enclosure, space, vehicle, vessel or place. It is no where the case of the prosecution that railway platform is a room, house, tent, enclosure, space, place etc. in which instrument of gaming was kept by the petitioner nor the gaming was done with a view to profit or gain to any person who could be called owner or occupant of the platform. Neither the railway platform was owned nor occupied by the petitioner nor it is such a place which could be called house, room, enclosure, space, vehicle, vessel etc. thereforee the M.M. could not have derived any strength from S. 4(2) of the Act It is only S. 12 of the Act which is applicable to facts of this case [S. 12 is then reproduced]

(6) Railway platform can be called a public place. It is only when a person is actually found gambling at a public place that Section 12 of the Act will be attracted. In this case as already observed above from the testimony of prosecution witnesses it cannot be inferred that the petitioner was found actually gambling at the platform. Rather PW-1 in no unequivocal words, admitted that the petitioner was not gambling. He was only standing by the side. To my mind, from this statement read with statement of PW-2, the only irresistible conclusion which can be arrived at is that the prosecution has miserably failed to bring home the guilt of the petitioner. The case of the prosecution is not covered under the provision of S. 12 of the Act. Revision allowed.