

P.K. Anthumayi and ors. Vs. the State

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Court : Kerala

Decided On : Nov-18-1998

Reported in : 1999(1)ALT(Cri)315; 1999CriLJ1179

Judge : D. Sreedevi, J.

Acts : Kerala Gaming Act, 1960 - Sections 2, 7 and 8

Appeal No. : Cri. M.C. No. 959 of 1996

Appellant : P.K. Anthumayi and ors.

Respondent : The State

Advocate for Def. : Muraleedharan Nair, Public Prosecutor

Advocate for Pet/Ap. : M. Ramesh Chander,; M. Vijayakumar,; V. Ramkumar Nambiar

Disposition : Petition allowed

Judgement :

ORDER

D. Sreedevi, J.

1. This Cri. M. C. has been filed by the petitioners to quash Annexures A-1 and A-2 in S.T.C. No. 2745 of 1995 of the Judicial First Class Magistrate-I, Hosdrug in

Crime No. 272 of 1995 of the Hosdrug Police Station. The first petitioner is a fishmonger by profession. Petitioners 2 to 9 are also engaged in the business of fishing. They were charged for offences punishable under Sections 7 and 8 of the Kerala Gaming Act. Annexure A-1 is the first information report in Crime No. 272 of 1995, and Annexure A-2 is the charge against them.

2. The prosecution case is that on 16-5-1995 at about 3.10 p.m., the petitioners were found playing cards in Room No. XI/172 belonging to the first petitioner and hence committed offences under Sections 7 and 8 of the Kerala Gaming Act. Annexure A-2 is the charge sheet filed against the petitioners. According to the petitioners, even as per the first information report and charge-sheet the petitioners were found playing cards in a private building, which is in the exclusive possession of the first petitioner. Hence, it is submitted by Mr. Ramesh Chander, learned counsel for the petitioners, that Sections 7 and 8 of the Kerala Gaming Act has no application to the facts of this case and as such there is no offence. It is, therefore, prayed that the charge sheets against the petitioners are liable to be quashed.

3. Sections 7 and 8 of the Kerala Gaming Act read as follows:

7. Penalty for opening, etc. a common gaming house:- Whoever opens, keeps or uses, or permits to be used any common gaming house, or conducts or assists in conducting the business of any common gaming house, or advances or furnishes money for gaming therein, shall be liable on conviction to fine not exceeding five hundred rupees, or to imprisonment not exceeding three months, or to both.

8. Penalty for being found gaming in a common gaming house:- Whoever is found gaming or present for the purpose of gaming in common gaming house shall, on conviction, be liable to imprisonment which may extend to one month or to fine which may extend to five hundred rupees or to both and any person found, in any common gaming house during any gaming or playing therein shall be presumed until contrary be proved, to have been there for the purpose of gaming.' For invoking both the sections, one of the conditions precedent is that there must be a common gaming house. Common gaming house has been defined in Section 2(a) of the Act, which reads: 2(a) 'common gaming house' means any house, room,

tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel or place whether by way of charge for the use of instruments of gaming or of the house, room, tent, enclosure, vehicle, vessel, or place or otherwise howsoever and include any house, room, tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming.

4. Admittedly, the building XI/172 belongs to the first petitioner. So, it is a private house. There is no mention of any common gaming house in the first information report. The only information the Sub-Inspector of Police got was that the petitioners were gaming in the house of the first petitioner. Even if the petitioners were gaming in the house of the first petitioner, since it is not alleged to be a common gaming house, it cannot constitute an offence. In *Kunhikannan v. Assistant Sub-Inspector of Police 1985 Ker LT 484*, this Court held as follows: -

For invoking Sections 7 and 8, one of the conditions precedent is that there must be a common gaming house. Gaming in a private building or place is not made offence. There is nothing to show that it is intended to be prohibited also. The words used are not 'gaming house', but 'common gaming house'. Common gaming house indicates that it is a place intended and used frequently as a common place for the purpose. The existence of such place and gambling conducted there may be public nuisance and the purpose of the Act is to prevent the same and make violations punishable as offence.

This decision is squarely applicable to the facts of this case. The learned Public Prosecutor fairly conceded that there is no allegation that the petitioners have committed offence in a common gaming house. Petitioners were found playing cards for profit in a private building in the possession of the first petitioner. That is not an offence coming under Sections 7 and 8 of the Act.

In the result, Annexures A-I and A-2 in STC No. 2745 of 1995 of the Judicial First Class Magistrate-I Court, Hosdrug in Crime No. 272 of 1995 of the Hosdrug Police Station are quashed.

The Cri. M. C. is accordingly allowed.

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