

Vajesing Mathursing and ors. Vs. the State of Gujarat

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Court : Gujarat

Decided On : Jul-09-1969

Reported in : 1971CriLJ157

Judge : N.G. Shelat, J.

Appellant : Vajesing Mathursing and ors.

Respondent : The State of Gujarat

Judgement :

ORDER

N.G. Shelat, J.

1. This application in revision is directed against an order passed on 30-3-1967 by Mr. N. K. Bbarvad, City Magistrate, 10th Court, Ahmedabad, in Criminal Case No. 541 of 1964, whereby the 'gambling-muddamal' is ordered to be confiscated to the State.

2. The prosecution case wa3 that Room No, 37 in Shivprasad Chawl, Ahmedabad was in occupation of one Babusing Medasing and that he was running a common gaming house therein. Mr. B. F. Jadeja, the Police Inspector raided that room on 12.12.1963 under a general Authority given to him Under Section 6 of the Bombay Prevention of Gambling Act, hereinafter referred to m 'the Act', by the then Commissioner of Police Mr. Ramayer. On a search made thereof in presence of

Panchas, acme article3 said to be a record con' taining beta and slips etc. were found. Beside', in one tin Rs. 1.964-95P. were found# On a search made of the person of Babusing Ra. 65/-were found, and Rs. 14-55P. were found on the person of Vajesing Mathursing, who was accused No. 2 in the case. He ia applicant No. 1 before thia Court, It further appears that from hs bag hanging on the peg in that room Rs. 40;)/- were found. All these articles were attached by the police, making a panch-nama in respect thereof. The complaint was then filed against Babuaingi who was accused No. 1 :in the case and Vajesing Mathursing, who waa accused No. 2 in the case, in respect of offences under S?. 4 and 5 of the Act, in the Court of the City Magistrate, 8th Court, Ahmedabad. That case was heard by Mr. K, H. Damani.City Magistrate, 10th Court, Ahmedabad, and both the accused came to be acquitted by him on 21-8.1964. He had also directed that the Muddamal he returned to those from whom it was attached by the Police.

3. Being dissatisfied with that order of acquittal, the State of Gujarat filed Criminal Appeal No. 1099 of 19Si in this Court, and during the pendency of that appeal, aoeused No. 1 Babusing died. A note to that effect was filed in the Court, The appeal was heard in respect of accused No. 2, and thia Court direct, ed a retrial of accused No. 2 in the case. The case than came up for trial before Mr. N. K. Bharvad, City Magistrate, 10th Court, Ahmedabad, and after considering the material an record he had come to the conclusion that the prosecution has failed to establish the case against the accused. While acquitting the ac. cused in respect of the offences under Sa. 4 and 5 of the Act, the learned Magistrate had directed the 'gambling muddamal' to be con-fiacated to the State. Being dissatisfied with that order passed by Mr. N. K. Bharvad, City Magistrate, 10th Court, Abmedabad, original accused No, 2 applicant No. 1 has come ia re-vision before this Court. Since Babusing ia dead and some of the muddamat waa attached from Babuaing, his heirs, who are applicants Nos. 2 and 3 have also come in revision.

4. The contention made out by Mr. Thakore, the learned Advocate for the applicants is that the learned Magistrate has erred in confiscating the muddamal to State, when the accused are not found guilty in respect of the offences for which they were charged. According to him, the Magistrate can order confiscation of any

such articles to the, State only when the accused is convicted of the offences under the Act. He invited a reference to Section 8 of the Aot, which governs the present case.

5. Section 8 of the Act runs thus:

On conviction of any person for opening, keeping or using a common gaming-house, or gaming therein, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein or on the persons of those who were 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 the proceeds thereof, with all moneys seized therein, to be forfeited; or, in his discretion, may order any part of such proceeds and other moneys to be paid to any person appearing to be entitled thereto.

6. On a plain perusal of this provision it is clear that the order of forfeiture of any muddamal property can only follow the order of conviction of any such person in the case. The accused was not convicted of any offence under the Act. The learned Magistrate has made no reference to the provision under which he has passed such an order and he appears to have lost sight of the provision contained in Section 8 of the Act, which governs such a case falling under the Act. Even apart from any such specific provision, in a special Act such as this, the normal rule of law as contained in Section 517 of the Criminal P.C., is to return the muddamal to him from whom it was attached in case he is acquitted in the case, unless circumstances justifying a different order to be passed, The Gambling Act is a special enactment and when a specific provision is made therein, in regard to disposal of muddamal before the Court, that provision has to be followed and Section 517 of Criminal P.C. cannot be invoked. The order of confiscation or forfeiture of the muddamal property to the State is, therefore, clearly bad as it violates express provision in that respect contained in Section 8 of the Act when the accused were acquitted in the case.

7. In the result, therefore, the order passed by the learned Magistrate confiscating the muddamal to the State is erroneous in law and is liable to be set aside.

8. The application is allowed and the order made by the learned Magistrate directing confiscation of the gambling muddamal is set aside. The said muddamal is directed to be handed over to the person from whom it was attached as stated in the Panchnama. So far as Babusing, accused No. 1, is concerned, any amounts etc. attached from him or from his possession or from his person should be handed over to the heirs or legal representatives on production of a succession certificate from the Court.

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