Chimanlal Vs. the State

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Court : Rajasthan

Decided On : Aug-05-1957

Reported in : AIR1958Raj335

Judge : K.K. Sharma, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 342 and 439; Rajasthan Public Gambling Ordinance, 1949 - Sections 2(2) and 3

Appeal No. : Criminal Revn. No. 78 of 1957

Appellant : Chimanlal

Respondent : The State

Advocate for Def. : R.A. Gupta, Deputy Govt. Adv.

Advocate for Pet/Ap. : O.C. Chatterjee, Adv.

Disposition : Revision partly allowed

Judgement :
ORDER

K.K. Sharma, J.

1. This is an application in revision by Chiman Lal, who was convicted by the learned First Class Magistrate No. 2, Jaipur City, under Section 3/4 of the

Rajasthan Public Gambling Ordinance, 1949, and sentenced to a fine of Rs. 25.

2. According to the prosecution it was learnt on reliable information that the applicant Chiman Lal was keeping a gaming house in Johari Bazar, Jaipur City. On this information a warrant was obtained from the Superintendent of Police, District Jaipur, under Section 5 of the Rajasthan Public Gambling Ordinance, 1949 (hereinafter to be referred to as the Gambling Ordinance).

On 18-10-1956, Sub-Inspector Bahadur Singh, S.H.O., Police Station Manak Chauk, with this warrant went to the stall of the applicant in Johari Bazar, gave a one-rupee currency note No. K/60-632016 after initialling to Teju P. W. 1, (hereinafter to be referred to as the punter) and directed him to stake annas -/8/- on figure 8 and the remaining annas -/8/- on, figure 7.

The punter accordingly went to the stall of the applicant on the same date after nightfall, and staked annas -/12/- on figure 8 and annas -/8/-on figure 7 with the applicant. Soon after his staking a raid was made by Bahadur Singh's party on the stall of the applicant, and the initialled currency note, which had been handed over by the punter to the applicant was recovered from the stall.

Four pieces of paper are also said to have been recovered from the said stall, but as no reliance has been placed by the learned Magistrate nor are they traceable on the file at present, I take no account of them.

3. The prosecution produced the punter as P. W. 1, and also examined Shri Bahadur Singh as P. W. 3, and one Hazari Lal as P. W. 2. It may be mentioned that at the time of the delivery of the initialled currency note by Shri Bahadur Singh to the punter, a memo Ex. P. 2 was prepared by the Sub-Inspector.

At the time of the recovery of the currency note in question, recovery memo Ex. P. 3 was prepared. Ex. P. 3 appears to have been thumb marked by Hazari Lal P. W. 2. The punter deposed that the currency note in question was given after initialling by Shri Bahadur Singh to him for the purpose of staking annas -/8/- on figure 7 and annas -/12/-on figure 8, and that the sum of annas -/4/- was to be contributed by the punter himself.

He went to the stall of the applicant, handed him the initialled currency note as well as twotwo-anna pieces, and asked him to stake the sum of annas -/12/- out of it on figure 8 and annas -/8/- on figure 7. Thereafter he signalled to the Sub-Inspector, Shri Bahadur Singh, to search the stall and find out the said currency note. He is corroborated by the evidence of Shri Bahadur Singh, except that the latter says that he had asked the punter to stake annas -/8/- on figure 7 and the remaining annas -/8/- on figure 8.

4. The accused denied that the currency note was recovered from his shop. The learned Magistrate, however, found him guilty of the offence under Section 3/4 of the Gambling Ordinance, and sentenced him as mentioned in the beginning of this judgment. The applicant went in revision to the Court of Sessions Judge, Jaipur City, but his revision was dismissed. He has now come in revision to this Court.

5. I have heard Shri O.C. Chatterjee on behalf of the applicant and Shri R.A. Gupta on behalf of the State. It has been argued by Mr. Chatterjee that the evidence of punter was not corroborated by any other evidence, and, therefore, his solitary statement ought not to have been believed by the trying Magistrate.

Further it was argued that it had not been proved at all as to what gain would have been made by the punter if the result had been in his favour, or what loss he would have sustained, if it would have been against him. Therefore it was not a case of betting. Finally it was argued that the examination of the applicant under Section 342 of the Code of Criminal Procedure was highly defective which has prejudiced the applicant, and, therefore, on all the above counts the conviction should not be sustained.

Learned counsel relied on certain decisions of the Supreme Court in which it has been held that examination under Section 342, Cr. P. C., is not a mere formality, and that it should be properly made. Learned counsel also cited a ruling of the Madhya Bharat High Court in the case of Harakchand Radhakishan v. State, AIR 1954 Madh-B 145 (A).

6. On behalf of the State it was argued by Mr. R.A. Gupta that it was a finding of fact that the initialled currency note was recovered from the possession of the

applicant. Further it was argued that there was the evidence of the punter as well as of Shri Bahadur Singh, from which it has been proved that the initialled currency note was handed over to the punter with a direction that he should stake on figures 8 and 7, and that the said note was recovered from the possession of the applicant when his stall was searched.

It was also proved by the evidence of the punter that he had handed over the currency note to the applicant for staking purpose as directed by Shri Bahadur Singh. This evidence was believed by both the lower courts, and this Court as a court of revision should not interfere with the finding of fact recorded by the trying Magistrate that the said note was recovered from the stall of the applicant, and that it had been given by the punter to the applicant with a direction that annas -/8/- were to be staked on figure 7 and annas -/12/- on figure 8.

It was argued that the currency note was an instrument of gaming within the meaning of Section 2 (3) of the Gambling Ordinance, and as Shri Bahadur Singh had made a search under the warrant obtained from the Superintendent of Police of the District, a presumption arose under Section 6 of the Gambling Ordinance that the applicant was keeping a common gaming house, and, therefore, he was rightly convicted under Section 3 of the Gambling Ordinance.

As the applicant was found inside that house, he was also guilty of the offence under Section 4 of the Gambling Ordinance, and his conviction under both the Sections is quite proper. As regards the argument that the examination of the applicant under Section 342 was not satisfactory, it was argued that there is no doubt that the statement was not full and satisfactory, but the applicant having denied the recovery of the currency note in question from his stall, he was not in any way prejudiced by the omission of the question why he had received the currency note or whether he had received it for purposes of gambling.

Reliance was placed upon a ruling of their Lordships of the Supreme Court in the case of Chikkarange Gowda v. State of Mysore, (S) AIR 1956 SC 731 (B). Reliance was also placed upon two rulings of the Bombay High Court, one in the case of P.X. D'Souza v. Emperor, AIR 1932 Bom 180 (C), and the other in the ease of Pyrelal Gokulprasad v. Emperor, AIR 1932 Bom 194 (D). Learned counsel

for the applicant tried to distinguish these Bombay rulings on the ground that in those cases betting had been proved, while in the present case it had not been proved.

7. I have considered the arguments of both the learned counsel. First of all I may take up the question whether the applicant has in any way been prejudiced by omission to put a question as to the purpose for which the currency note was handed over to him by the punter. There is no doubt that the only question that was put was whether the said currency note was recovered from his shop, and he replied in the negative.

No further question was put to him as to whether the currency note was handed over to him for the purpose of betting, but I do not think any useful purpose would have been served by putting this question when the applicant had denied the very recovery of the note from his shop. As a matter of fact in view of the answer that he had given to this question, there was no necessity to put him the question as to for what purpose he had received the note.

If this question would have been put, the only answer which would have been expected from the applicant was that the currency note in question was not even recovered from him. I, therefore, do not think that any prejudice has been caused to the applicant by the omission to put any further question to him under Section 342, Cr. P. C.

It is certainly expected of the courts trying criminal cases that proper compliance be made of the provisions of Section 342, Cr. P. C., and it is no doubt a matter of regret that in quite a number of cases in spite of the exhortations of this Court and those of the Supreme Court, the criminal courts sometimes fail to comply satisfactorily with this salutary provision of law.

However, procedural law is meant for holding, in the just decision of the case, and any non-compliance with those provisions, unless they go to the root of the matter, will not be sufficient to quash a conviction or any other order of the lower courts unless it has occasioned a failure of justice. The framers of the Code of Criminal Procedure very rightly anticipated that sometimes there might be errors in

complying with the procedure provided by the Code of Criminal Procedure, and, therefore, they enacted certain sections condoning defects in procedure, unless they occasioned failure of justice.

Sections 529, 532, 533, 535, 536 and 537 are the provisions which condone certain irregularities, unless thereby a failure of justice has been occasioned. Their Lordships of the Supreme Court in the case of Chikkarange Gowda and Ors. v. Stateof Mysore, cited above, held that the compliance with the provisions of Section 342, Cr. P. C., is not a mere idle formality, and although they agreed with the comment made by the High Court that in that case the examination of the accused was neither full nor very satisfactory to enable them to explain the circumstances appearing against him, all the same their Lordships held that no serious prejudice had been caused to the accused so as to vitiate the whole trial.

In that case the charge against the accused was that they constituted unlawful assembly, which committed riot and many other acts of violence. Some of the accused, who were appellants before their Lordships, had denied being in the mob. No questions were put as to certain weapons with which the appellants in that case are said to have been armed.

Their Lordships observed that the questions in that respect would only have elicited a denial from the appellants, and consequently held that no prejudice was caused by such omission, and maintained the conviction, though for other reasons the offence under Section 302, I. P. C., was altered to one under Section 326, I. P. C. I am fully satisfied that in this case no prejudice was caused to the accused by omission of the learned Magistrate to put any further questions to the accused besides those actually put by him, and, therefore, I am not inclined to interfere with the conviction on this ground.

8. So far as the argument that the punter is not corroborated by any evidence is concerned, I find that he is corroborated by the evidence of Shri Bahadur Singh as well as the recovery of the initialled currency note from the stall of the applicant. The ruling of the Madhya Bharat High Court relied on by the learned counsel does not apply to the facts of the present case.

9. Lastly coming to the question whether the conviction is bad, because the punter did not state as to what would have been the extent of his gain, had the result been in his favour, and what would have been the extent of loss, if the result were against him, I find that it was not incumbent upon the prosecution to prove as to what would have been the extent of such loss or gain.

The punter stated that he had handed over a currency note and annas -/4/- with a direction that annas -/12/- should be staked on figure 8 and annas -/8/- on figure 7. This clearly means that the punter was to suffer a loss if the result went against him, and made some gain if it went in his favour.

Under Section 2 (2) of the Gambling Ordinance 'gaming' includes wagering or betting. The word 'bet' in Webster's New International Dictionary of the English Language, Second Edition, means, inter alia, staking or pledging as between two parties upon the event of a contest or any contingent issue. In the Chambers's Twentieth Century Dictionary, 'bet' means, 'a wager: something staked to be lost or won on the result of a doubtful issue.'

To my mind, when the punter said that he had staked annas -/12/- on figure 8 and annas -/8/- on figure 7, he clearly meant that he had pledged to suffer the loss in case the result was against him, and to make gain in case it was in his favour. The currency note had been initialled by Shri Bahadur Singh. It was handed over by the punter to the applicant with the purpose of staking, and it was recovered from the shop of the applicant on search under a warrant under Section 5 of the Gambling Ordinance.

The finding that the punter had staked the currency note on certain figures, and that the currencynote was recovered from the stall of the applicant, on search by the Sub-Inspector, Shri Bahadur Singh, are findings of fact, and are based on evidence, which has been believed by the trying Magistrate,

This Court is not sitting as a court of appeal, and as a court of revision it would not be justified in interfering with these findings of fact, unless they were perverse or were such as no reasonable man would have recorded on the evidence produced in the case. The currency note in question comes in the definition of an instrument

of gaming within the meaning of Section 2 (3) of the Gambling Ordinance. An 'instrument or gaming' is defined by the said sub-section as follows :

''Instrument of gaming' includes any article used as a subject or means or appurtenance of, or for the purpose of carrying on or facilitating, gaming and any document used as a register or record or evidence of any gaming.'

The initialled currency note was no doubt an article used as a means of gaming. In the case of AIR 1932 Bom 180 (C), referred to above, the finding was that the police employed a bogus punter to make a bet with the accused and gave him a marked coin and that the marked coin was found on a raid of the accused's premises in his till.

On these findings it was held that the accused was rightly convicted of keeping a common gaming house within the meaning of Section 4 (a) of the Bombay Prevention of Gambling Act. I may say that Section 4 (a) of the Gambling Act is similar to Section 4 of the Gambling Ordinance. In the case of AIR 1932 Bom 194 (D), also of the Bombay High Court, referred to above, the facts found were that the Sub-Inspector, who made the search, gave three marked coins to the punter, and he saw the punter go into the shop of the accused, and the punter went to the shop of the accused, and made bets with the marked coins on Nos. 4, 6 and 8, according to a form of betting on American futures.

It was held that the marked coins were an instrument of gaming, as they were used as a means of gaming. Under the Bombay Act, which was in question, 'instrument of gaming' and 'gaming house' bore the same definitions which they bear under the Rajasthan Gambling Ordinance. Learned counsel argued that in that case it was proved as to what would be the loss and what would be the gain in case the punter lost or won. I, however, do not find any such thing in both the judgments of the Bombay High Court referred above.

10. Before closing I may note that in this case also it has been proved by Shri Bahadur Singh that the form of gaming which was indulged in at the stall of the applicant was the betting on American futures.

11. The applicant was rightly convicted under Section 3 of the Ordinance for keeping a common gaming house. To my mind his conviction under Section 4 was not proper, as Section 4 punishes a person who is found 'in any such house, room, tent, enclosure, space, vehicle or place, playing or gaming with cards, dice, counters money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise'.

It has not been proved in this case that when the search was made the applicant was found playing or gaming with cards or was found there present for the purpose of gaming. His conviction under Section 4 was, therefore, not proper.

12. The application for revision is partly allowed. The conviction of the applicant under Section 3 of the Rajasthan Public Gambling Ordinance, 1949, is maintained, but his conviction under Section 4 of the said Ordinance is set aside. Under the circumstances, the sentence is reduced to a fine of Rs. 20. In default of payment of fine he will undergo one week's simple imprisonment.