

Tulsi Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-24-2002

Reported in : 2003WLC(Raj)UC8; 2002(3)WLN55

Judge : D.N. Joshi, JJ.

Appeal No. : S.B. Criminal Misc. Petition No. 284 of 2000

Appellant : Tulsi Ram

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

D.N. Joshi, J.

1. This petition Under Section 482 Cr.P.C. has been filed by the petitioners for quashing the order of taking cognizance against the petitioners Under Section 3/4 ,of the Rajasthan Public Gambling Ordinance, 1949 (in short 'the Ordinance' hereinafter) on a complaint filed by S.H.O. Police Station, Sadar Bazar, Jodhpur.

2. The facts in brief are that the petitioners are employed in Richirich Video Parlour situated at shop No. 123 Nai Sadak, Jodhpur owned and operated by one Shri Umesh Vyas, who is the proprietor of the said Video Parlour. The owner of the said Video Parlour is carrying on the business of Video Games for providing

entertainment to the persons who are desirous to play the game. It has further averred in the petition that games mentioned in para No. 3 are the games exhibited on the electronic video games machine and the games are open for the general public at large for the purpose of amusement and entertainment of the persons whosoever is desirous to visit and the play the same. The person desirous to play any of the video game of his choice is required to pay a sum of Re. 1/- only and against Re. 1/- the player is provided a token made of metal. On one side of the token it is embossed that 'only for amusement' and on the other side it is mentioned 'no cash value', meaning thereby that the player is required to put that token in the whole present in the video game machine and it is only then by pushing the on-button the video game machine is operated and player with a certain amount of skill, knowledge and experience earns the points depending upon his ability and capability to play the game. The game is of mere skill and is nothing but source of entertainment and amusement for the general public. The S.H.O. Police Station Sadar Bazar, Jodhpur committed a raid on the said Video Parlour and about 26 Persons, who were busy in playing the video games were arrested and also seized the video games machines, which were being operated by the players. Amongst 26 persons, three of them were the present petitioners, who are the employees of the said video parlour. Tulsi Ram is the Manager of the said Video Parlour and other two are care taker and helpers. The learned Magistrate took cognizance against all the accused-persons on the same day. 23 accused-persons were convicted and sentenced to fine on pleading guilty, but the present petitioners did not plead guilty and they were enlarged on bail. Against the order of cognizance as stated earlier, the present petition has been filed.

3. It was argued by the learned Counsel for the petitioner that the said electronic video games exhibited/operated in the said Video Parlour are the game of mere skill only and there is no element of chance involved in it. Therefore, no offence was committed at the face of the complaint. It was further argued that Gaming included wagering or betting but does not include a lottery as per Section 2(2) of the Ordinance. as per explanation in order to invoke any of the Sections disclosing offence under the Ordinance, the elements of wagering, betting must necessarily exist. Meaning thereby, the element of chance is the condition precedent and for this the authority acting in furtherance of the said Ordinance of 1949 is required

to apply its proper mind and must have a sound reason to believe that the activities taking place necessarily involved in it the element of pure chance. Therefore, no offence has been committed by the petitioners.

4. The learned Counsel for the petitioner has placed reliance on the following decisions:

(1) Harilal Gordhan v. Emperor AIR 1937 Bombay 385

(2) Dr. K.R. Lakshmanan v. State of Tamilnadu and Anr. : 1996 CriLJ1635

(3) Standard Games v. State of U.P. and Ors. : AIR 1997 SC285

(4) State of M.P. and Anr. v. Smt Abha Devi : [1999]2SCR930

(5) Babu Bhai and Ors v. State of Raj. and Ors.

(S.B. Cr. Misc. Pet. No. 508/97 decided on 9.11.1997)

On the other hand, the learned Public Prosecutor supported the order of the learned Magistrate and argued that the petition at this stage is not maintainable and liable to be dismissed.

5. In Osbron's Concise Law Dictionary, 8th Edition, 'Gaming' has been defined at page 155 as follows:-

gaming. Under the Betting, Gaming and Lotteries Act, 1963 and the Gaming Act, 1968 gaming means the playing of a game of chance for winnings in money or money's worth, and a game of chance includes a game of chance and skill combines, but does not include any atheletic game or sport.

6. Section 2(2) of the Ordinance defines 'gaming' as follows :-

In this Ordinance, unless there is anything repugnant in the subject or ontext,

(1) XXX

(2) 'gaming' includes wagering or betting but does not include a lottery;

Explanation-Any transaction by which a person in any capacity whatever employs another in any capacity whatever or engages for another in any capacity whatever to wager or bet with another person shall be deemed to be 'gaming'.

7. Section 3 prescribes penalty for owning or keeping or having charge of a gaming house. Section 4 prescribes penalty for being found in gaming house.

8. Section 12 of Ordinance is as follows:-

12. Ordinance not to apply to certain games.-Nothing in this Ordinance shall be, held to apply to any game of mere skill, as distinguished from a game of chance or a game of chance and skill combined, unless it is carried on in a common gaming house.

9. It has been held in *State of A.P. v. K. Satyanaranaya*, : 1968 CriLJ1009 as under:

We are also not satisfied that the protection of Section 14 is not available in this case. The game of Rummy is not a game entirely of chance like the three card game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy on the other hand, requires certain amount of skill because the fall of the cards has to be memorized and the bundles up of Rummy requires considerable skill in holding and discarding cards. We cannot therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact of all games in which cards are Shuffled and dealt out there is an element of chance because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it. Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes. The offence may be brought home.

10. In *Geeta Enterprises v. State of U.P. and Ors.* : [1983]3SCR812 , it was observed:

The word 'entertainment' has been used in Section 2(3) in a very wide sense so as to include within its ambit, entertainment of any kind including one which may be purely educative. Sub-section (3) itself by using the word 'entertainment' as 'any exhibitional, performance, amusement, game or sport to which persons are admitted for payment' has extended the scope of entertainment to expressly include any kind of amusement, game or sport. By operating the video, the operator of the video pays 50 paise per 30 seconds for playing the games, sports and other kind of performance which are shown on the machine and which can be watched by interested spectators. The circumstance that no admission fee is charged from viewers of video by itself, however, cannot defuse or alter the kind of entertainment derived by the person who pays for playing the games. The fact that for playing the video games a great amount of skill is required is not material because he would derive pleasure and be entertained regardless of whether he possesses skill or not. If he possesses skill he may derive more pleasure on less payment otherwise he will have the same. Besides, the game brings a substantial return for the person who makes available these facilities. Hence such an exhibition falls within the purview of the word entertainment as envisaged in Sub-section (3) the money charged for use of the video machine is an admission to entertainment and the payment made by the person who uses the machine is the payment for admission. It is a payment connected with entertainment which a person is required to make as a condition of attending the entertainment. Hence as video show is clearly exigible to tax Under Section 3 of the Act.

11. It has been held in *Dr. K.R. Lakshmanan v. State of Tamil Nadu* reported in : 1996 CriLJ1635 as follows:

The horse-racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post. Thus the horse-racing is a game where the winning depends substantially and preponderantly on skill.

12. It was further held in the above decision as under:

We may now take-up the second question for consideration. Section 49 of the Police Act and Section 11 of the Gaming Act specifically provide that the penal provisions of the two Acts shall not apply to the games of 'mere skill wherever played'. The expression 'game of mere skill' has been interpreted by this Court to mean 'mainly and preponderantly a game of skill'.

In the above case, the case of *State of Andhra Pradesh v. K. Satyanarayana* reported in : 1968 CriLJ1009 was followed.

13. The case of *Harless v. United States* (1843) Morris (Iowa) 169 was also relied by the Hon'ble Apex Court in the above case and in that case it was held as under:

The word 'game' does not embrace all uncertain events, nor does the expression 'games of chance' embrace all games. As generally understood, games are of two kinds, games of chance and games of skill. Besides, there are trials of strength, trials of speed, and various other uncertainties which are perhaps no games at all, certainly they are not games of chance. Among this class may be ranked a horse race. It is as much a game for two persons to strive which can raise the heaviest weight, or live the longest under water, as it is to test the speed of two horses, it is said that a horse race is not only uncertain in its result, but is often dependent upon accident. So is almost every transaction of human life, but this does not render them games of chance. There is a wide difference between chance and accident. The one is the intervention of some unlooked for circumstance to prevent an expected result, the other is uncalculated effect of mere luck. The shot discharged at random strikes its object by chance; that which is turned aside from its well-directed aim by some unforeseen circumstance misses its mark by accident.

14. It was held in *Standard Games v. State of U.P. and Ors.* reported in : AIR 1997 SC285 relying the decision of *Geeta Enterprises v. State of U.P.* : [1983]3SCR812 that charge of inserting the coin was realised only from those who wanted to operate the video game at the rate of 50 paise for a slot lasting upto 30 seconds and it amounts to entertainment within the meaning of Section 2(g) of the Act.

Therefore, video games is exigible to entertain tax.

15. It is also relevant to mention here that the case of Geeta Enterprises (supra) was followed by the Honble Apex Court in Standard Games v. State of U.P. (supra).

16. It has been held in Babu Bhai and Ors. v. State of Rajasthan and Ors. (S.B. Cri Misc. Petition No. 508/97) that arrow dart game does not amount to gaming and it was held that it is a game of skill and not a game of chance, which is saved by Section 12 of the Ordinance. Relying on the decision given in Saligram v. Emperor AIR 1933 Calcutta-8, learned Judge accepted the petition and quashed the F.I.R.

17. In view of the above judgments, the Court is of the considered opinion that the said video game is a game of mere skill as distinguished from game of chance or game of chance and skill combined. In the said video games, there are computerised chips which is the sole source of the such video games and on pressing the relevant button, the computeried chip so attached in the respective video game machine is activated and the game starts and the player by his sufficient knowledge and experience and by practice can control the game on his own and there is no interference outwardly whatsoever, the video games located in the said Video Parlour is nothing but for' the entertainment, and therefore, saved by Section 12 of the Ordinance.

18. It cannot be called a pure game of chance but it is a game of skill. In the games, there can be no doubt that the likelihood of success is within the control of any particular player, provided he possess the skill. No doubt, success would demand a high degree of skill or at any rate what is generally described as knack which is only another way of saying that the person playing must have an aptitude and must have a certain amount of experience and expertness in the play of the particular game. By pushing the button, the game starts on the monitor. In all these Video Parlours, on the token one side of the said token it is embossed that 'Only for amusement' and on the other side of the token it is mentioned that 'no cash value'. After pushing the button only, the video machine is operated and player with a certain amount of skill, knowledge and experience earns the points depending upon his ability and capability to play the game. If he earns 10 points,

then he in turn will get 10 more such tokens to play the game. Thus he can repeatedly play the game for 10 times by way of earning 10 points on account of paying Re. 1/- only for the said token. Therefore, the said games being the game of mere skill are nothing but source of entertainment and amusement for the general public.

19. Now, the question comes for determination whether the proceeding before the Magistrate be quashed or not ?

20. It has been held in *Ashok Chaturvedi and Ors. v. Shitul H. Chanchani and Anr.* reported in : 1998 CriLJ4091 as under.

Bald allegation in complaint that shares of complainant have been transferred on forged signatures--No iota of material to indicate how all or any of the accused were involved in alleged forgery-statement of complainant as well as witness not lending any support-Said allegations as well as statements not making out offences Under Sections 406, 420, 467, 468 and 120-B--Order taking cognizance thus not proper-Quashed in respect of accused persons who preferred special leave as well those who did not prefer such special leave petition.

21. The allegations in the complaint taken at their face value do not disclose any ingredient of offence and keeping in view the judgment of Hon'ble Apex Court.

22. Therefore, for the reasons stated above this miscellaneous petition is allowed. The complaint pending against the petitioner in the trial court is hereby quashed. It is further ordered that the cash and other implements of the game, which were seized by the police may be returned to the petitioner forthwith.