

In Re: Thathi Reddi and ors.

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Court : Chennai

Decided On : Nov-17-1948

Reported in : (1949)1MLJ63

Appellant : In Re: Thathi Reddi and ors.

Judgement :

Rajagopalan, J.

1. All the petitioners were convicted under Section 9 of the Madras Gaming Act, 1930. A-4 was in addition convicted under Section 8 of that Act. Before any conviction could be ordered under either of these two sections it must certainly be proved that the premises in which these persons were found gaming was a common gaming house within the meaning of Section 3 of the Act. The learned Magistrate relied to a considerable extent on the presumption prescribed by Section 6 of the Act,

Any cards, dice, etc, found in the place shall be evidence that such a place is used as a common gaming house and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the police officer or any of his assistants.

There could be certainly no denying the fact that cards and money were found with the petitioners and obviously they were playing a game of cards for stakes. There was gaming but the question is, was it gaming in a common gaming house Were

that the only piece of evidence that cards and money were found with the petitioners, Section 6 would justify the application of the presumption that the petitioners were gaming in a common gaming house. That was the scope of the decision in *Alagappa Chettiar v. Emperor* 1932 M.W.N. CrL. 120. Walsh, J., observed:

At the best the omission of these words can only mean that in spite of there being no evidence to the contrary the Court need not accept them as conclusive evidence but it cannot mean that the prosecution cannot succeed without calling other evidence.

The learned advocate for the petitioners referred to *Kasa Satyanarayana, In re*, : (1945)2MLJ521 . But there was a specific finding by the learned Magistrate on the entire evidence on record that the accused were not deriving any profits by running the gaming house. I am unable to see anything in that decision to conflict with the principles laid down in *Alagappa Chettiar v. Emperor* 1932 M.W.N. CrL. 120.

2. In this case apart from the fact that cards and money were found with the petitioners when the police raided the premises there was the fact that the house was one occupied by Kanakarathamma. The petitioners including A-4 admitted that they were not the residents of that house. Their explanation for their presence there failed to find acceptance at the hands of the Courts below. From this fact, in addition to the fact that they were found gaming, the learned Magistrate rightly held that the evidence on record simply proved the case for the prosecution, that these petitioners were gaming in a common gaming house. The conviction of the petitioners under Section 9 is confirmed. The sentences are not heavy.

3. The conviction of A-4 under Section 8 however, stands on an entirely different footing. The presumption permitted by Section 6 can be drawn only to establish that the house in question was a common gaming house. It cannot be extended further to establish without further evidence that a specified person was the owner or keeper of that common gaming house. There was really no acceptable evidence that A-4 was the owner of the house in question or even that he was keeping or using such a house for gaming. To reiterate, the case for the

prosecution itself was that one Kanakarathamma occupied that house. Even if A-4 was her lover that does not necessarily establish that he occupied that house along with Kanakarathamma. In the absence of evidence to prove that A-4 did derive any profit from the gaming he cannot be convicted under Section 8. The reasoning of the learned Magistrate, that as A-4 had only a small amount of money with him when the Police raided the house, that sum of money must represent the profits A-4 derived from the gaming, fails to commend itself to me. The conviction of A-4 under Section 8 is set aside and is directed to be acquitted of that charge. The fine imposed under that section, if collected shall be refunded to A-4.

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