

In Re: C. Kanniah Maistry and ors.

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Court : Chennai

Decided On : Aug-25-1939

Reported in : AIR1939Mad976; (1939)2MLJ618

Appellant : In Re: C. Kanniah Maistry and ors.

Judgement :

ORDER

Patanjali Sastri, J.

1. The petitioners were prosecuted in this case for an alleged offence under Section 4 (2) of the Madras Gaming Act, 1930. The learned Appellate Magistrate however observed that there was no betting at the time of the night when the instruments of betting were seized by P.W. 1 under Section 5 of the Act and that the petitioners were there only for the purposes of payment or sharing of profits. But he has held that the petitioners must be regarded as accessories either before or after the betting and found them guilty under Section 109, Indian Penal Code, read with Section 4(2) of the Gaming Act. This is clearly wrong as no particular person is found to have committed the offence under Section 4(2) of the Act, which the petitioners in this case could be said to have abetted. The learned Public Prosecutor has not attempted to support the conviction on this ground.

2. He urged however that the conviction could be upheld on two other grounds. First, he contended that payment of money or sharing of profits in pursuance of

betting on a horse race is also gaming as such distribution of prizes and dividends to winners is a fulfilment of the betting or wagering agreements. But the definition of 'gaming' in Section 3 of the Act has included only the actual wagering or betting on a horse race, and payments in fulfilment of such agreement cannot be regarded as part of such betting. See *Bradford v. Dawson* (1897) 1 Q.B. 307.

3. The learned Public Prosecutor next contended, that having regard to the statutory rule of evidence enacted in Section 6 of the Act, the conviction of the petitioners can be sustained as supported by evidence. Section 6 only enacts, so far as it is material for the purposes of the case, that gaming instruments found in any place entered or searched under the provisions of Section 5 shall be evidence that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the police officer. But, as I understand this section it does not take the prosecution in this case far enough, for it does not say that the mere finding of gaming instruments in such a place shall be evidence of gaming. There is obviously a wide difference between a person being present at a particular place for the purpose of gaming and his gaming at the place. It is only the latter act that is constituted an offence under Section 4(ii) of the Act and not the former. I am therefore of opinion that Section 6 of the Act cannot be invoked to sustain the conviction in the circumstances of this case. I set aside the conviction and sentence as well as the order of confiscation. The fine paid by the petitioners as well as the amount seized from them will be refunded.