In Re: M. Lal and ors.

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Court : Chennai

Decided On : Oct-08-1974

Reported in : 1975CriLJ1719

Judge : Paul, J.

Appellant : In Re: M. Lal and ors.

Judgement :
ORDER

Paul, J.

1. In C. C. No. 13971 of 1972 on the file of the Eighth Presidency Magistrate, George Town, Madras, the revision petitioners in Cri. R, C. No. 1040 of 1973 have been convicted of an offence under Section 49-A (1) (a) (i) of the Madras City Police Act and have been each sentenced to pay a fine of Rs. 100, in default to undergo S. I. for one month and in C. C. 13972 of 1972 on the file of the Eighth Presidency Magistrate, George Town, Madras, the revision petitioners in Cri. R. C. No. 1041 of 1973, have been convicted of an offence under Section 49-A (1) (a) (i) of the City Police Act and revision petitioners 1 and 2 have been each sentenced to pay a fine of Rs. 100, in default to undergo S. I. for one month and revision petitioners 3 to 8 have been each sentenced to pay a fine of Rs. 50 in default to undergo S. I. for one month and the revision petitioners in both these cases now challenge their convictions and sentences.

2. The accusation against the revision petitioners in Cri. R. C. No. 1040 of 1973, is that they as partners of a business carried on under the name and style of 'M. Lal and D. K. Raj, Commission Agents for purchasing race tickets' undertook as such commission agents to purchase race tickets in Bangalore and other places at their office at No. 10 Murugappan St. and collected money on 28-5-1972, from one Kumar who figures as A-3 before the trial court, in advance of race days and issued printed receipts to him in the aforesaid premises. The accusation against the revision petitioners in Cr. R. C. 1041 of 1973 is that the first and second revision petitioners acted as commission agents for purchasing race tickets at their office at No. 32 Kandappa Mudali St., Madras and undertook to purchase race tickets at Bangalore and other places and collected money on 8-7-1972 at about 10-30 a. m. through revision petitioners 3 to 6 from revision petitioners 7 and 8 for the purchase of such tickets in advance of race days and issued printed receipts with conditions printed on them.

3. On 28-5-1972 P.W. 1, the Inspector of Police C-2 police station on receiving information that the revision petitioners in Cri. R. C. 1040 of 1973, were indulging in receiving bets on horses to be run in the Bangalore races, at premises No. 10 Murugappan St., Madras verified the information and sent P.W. 2 as a decoy with a 10 rupee currency note M O 1, after preparing the mahazar Ex. P-1 attested by P.W. 3 and another and after giving the decoy P.W. 2 two slips Ex. P-2 series, and P.W. 2 went to the premises No. 10 Murugappan St., Madras and paid to the second revision petitioner and A 3 Rs. 10 and also handed over the slip Ex. P-2 series and received back one of the slips and then P.W. 1 rushed to the premises with his party and P.W. 3 and saw the second revision, petitioner sitting there and A 3 paying money to the second revision petitioner and he arrested the second revision, petitioner and A-3 and seized the tin box kept by the side of the second revision petitioner (M O 2) in which there was a sum of Rs. 294 which included the 10 rupee currency note M O 1 and which also contained the betting slips M O 4 series and carbon copy of Ex. P-2, M. O. 6 an issue of the Dina Thanthi newspaper dated 27-5-1972 was by the side of the tin box M O 2. These M. Os. were then recovered and P.W. 1 registered a case.

4. The second revision petitioner produced the receipt book Ex. P-5 before P.W. 2 and it was seized. On these facts, which are not seriously challenged the revision petitioners in Cr. R. C. No. 1040 of 1973 have been convicted.

5. In Crl. R. C. No. 1041 of 1973 the facts are that on 8-7-1972, P.W. 1, the Inspector of Police C-2 police station, on receiving information that the revision petitioners 1 and 2 had opened an office at No. 32 Kandappa Mudali St., Madras as commission agents for purchasing race tickets at Bangalore and other places, verified the information and after obtaining the warrant Ex. P-1, from the Assistant Commissioner, Central Range, sent a decoy P.W. 3 a police constable with a 10 rupee currency note M O 1 after initiating the same, and P.W. 3 went into the aforesaid premises and after handing over M O 1 and receiving back Rs. 4 and obtaining the receipt Ex. P-2 he returned; and then P.W. 1 rushed to the spot with his party accompanied by P.W. 2 and another and found the third revision petitioner sitting in front of the bill books and revision petitioners 7 and 8 paying money to the third revision petitioner. P.W. 1 then seized the cash of Rs. 1,557 Which was there and which included the currency note M O 1, the bill books M O 3 to M O 5 series, the pocket book M O 6, two sporting news books M O 7 series, three South India Racing News M O 8 series under the house search list Ex. P-3 and arrested revision petitioners 3 to 8, took them to the police station and registered a case. On these facts which are not seriously challenged the revision petitioners in Crl. R. C. 1041 of 1973 have been convicted as mentioned above.

6. In these revision petitions it has been contended that the facts mentioned above would not make out an offence under Section 49-A(1)(a)(i) of the Madras City Police Act, for the revision petitioners in Crl. R. C. No. 1040 of 1973 and the revision petitioners 1 to 6 in Crl. R. C. 1041 of 1973, were only acting as commission agents or as servants, of persons desirous of purchasing betting tickets in respect of horse races and they merely received the money for the bets from persons who were unable to go to the race course themselves to purchase betting tickets from the race course, and with that money they purchased betting tickets from the race course and subsequently when any of those tickets won prizes, collected the prize money and handed over the same to the persons concerned after deducting a small commission for the services rendered by them.

7. Admittedly, revision petitioners 1 and 2 in both these cases have started and have been running a business which has been styled as 'commission agents for purchasing race tickets' at No. 10 Murugappan St. and also at No. 32 Kandappa Mudali St. Ex. P-5 filed in Crl. R. C. 1040 of 1973 is a receipt book which was being used by the revision petitioners 1 and 2 for the purpose of issuing receipts to those persons who come and give money to them for the purpose of bets on horses to be run at races, Ex. P-2 filed in Cr. R. C. 1041 of 1973, is the receipt issued for 'treble tickets' and Ex. P-5 is a duplicate of Ex. P-2. Those documents show that revision petitioners 1 and 2 received money towards purchase of betting tickets for horse races to be conducted on particular race days at various race courses, and issued to persons who pay the amounts, receipts similar to Ex. P-2 in Crl. R. C. 1041 of 1973 and similar to the receipts contained in Ex. P-5 in Crl. R. C. 1040 of 1973. In those receipts the conditions under which the money has been received and the receipt issued are mentioned. The conditions show that if the tickets purchased win prizes the moneys would be collected by the revision petitioners 1 and 2 at their risk and paid to the ticket holders the next day if the amount is small and within a week if the amount is large and in respect of such successful tickets the revision petitioners 1 and 2 would be entitled to 5% commission on the net amount collected, as collection charges and it is specifically stated in the conditions that 'the purchaser and the commission agents, (namely, the revision petitioners 1 and 2) have no other relationship other than principal and agents'. The learned Counsel for the revision petitioners 1 and 2 therefore submits that all that the revision petitioners 1 and 2 have been doing is receiving moneys from persons who wish to purchase betting tickets from the race enclosures on the day of the race but who are unable to go over to the race course for the purpose of purchasing such tickets which are issued only between certain hours and at particular places in the race enclosure and, the revision petitioners themselves on behalf of such persons purchase tickets from the race enclosures and if these tickets are successful they would collect the money and would hand over the same to the persons who have paid moneys for the purchase of these tickets, deducting 5% as commission for rendering such service to those persons, and as such, they are merely agents of those persons and consequently they cannot be held to have received bets on the horses and to have committed an offence under Section 49-

A(1)(a)(i) of the City Police Act:

Whoever being the owner or occupier or having the use of any house, room, tent, enclosure, vehicles, vessel or place, opens, keeps or uses the same for the purpose of gaming on a horse... shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

Section 3 of the City Police Act runs as follows:.'Gaming' does not include a lottery but includes wagering or betting except wagering or betting on a horse race when such wagering or betting takes place-

(i) on the date on which such race is to be run; and

(ii) in a place or places within the race enclosure which the authority controlling such race has with the sanction of the (State) Government set apart for the purpose. For the purpose of this definition, wagering or betting shall be deemed to comprise the collection or soliciting of bets, the receipt or distribution of winning of prizes in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution.

Reading both the sections together, it is clear that if a person who owns or occupies or has the use of any house or room uses the same for the purpose of collecting, or soliciting of bets, receiving or distributing of winning or prizes in respect of any wager or bet on a horse race, he is liable to be punished as aforesaid. Only where the wagering or betting on a horse race takes place on the date on which such, race is to be run and in any place or places within the race enclosure set apart for the purpose with the sanction of the Government, it would be excluded from the purview of Section 49-A(1)(a)(i) of the City Police Act. Gaming by itself is playing at any game, sport pastime or exercise, lawful or unlawful, for money or any other valuable thing, which is staked on the result of the game i.e. which is to be lost or won according to the success or failure of the person who has staked. Wagering, which includes betting, is making a contract on an unascertained event, past or future, (in which the paries have no pecuniary interest other than that created by the contract), by which the parties are to gain or lose, according as the uncertainty is determined one way or the other. 'Gaming' is now always associated with the staking of money or money's worth on the result of a game of pure chance or mixed skill and chance, while 'wagering' is applied to money hazarded on any contingency in which the person wagering has no interest at risk, other than the amount at stake (Vide Earn Pratap Nemani v. Emperor 1912 Cri LJ 603 and Public Prosecutor v. Verajlal Sheth ILR (1945) Mad 674 : (1945) Cri LJ 765.

8. In Periya Yelumalai Chetti, In re (1941) 54 MLW 210 : (1941) Cri LJ 81, it was held that the expression 'common gaming house' in Section 3 of the Madras Gaming Act includes a house in which betting on horse racing takes place. It may be noted that 'gaming' as defined in Section 3 of the Madras Gaming Act, is practically word for word the same as the definition of 'gaming' contained in Section 3 of the Madras City Police Act.

9. Now, admittedly, revision petitioners 1 and 2 are the occupiers of or having the use of the premises No. 10 Murugappan Street and No. 32 Kandappa Mudali St. and in those premises they collect bets on horse races from various persons and they also receive and distribute the winning or prizes to persons who so laid the bets, after taking a commission for themselves. Therefore their act would certainly come under the definition of 'gaming', for 'gaming' includes wagering or betting as per the definition, except where the wagering or betting takes place on a horse race on the date on which the horse is to be run and at the special place in the race enclosure set apart for the purpose. The fact that the revision petitioners 1 and 2 after receiving such bets and the money from persons, purchased betting tickets at the race enclosures in the place set apart for that purpose and on those tickets they collected the winning or prize money, if any of those tickets are successful, thereby acting as agents of the persons who so placed the bets, would not take their act out of the purview of Section 49-A(1)(a)(i) of the City Police Act.

10. The learned Counsel for the revision petitioners has argued that only if the revision petitioners 1 and 2 had received bets at the aforesaid premises on horse races to be run and pay out the winning or prize money out of their own pocket,

they would be liable for an offence under Section 49-A(1)(a)(i) of the City Police Act. I am unable to accept this contention. The definition of 'gaming' as contained in Section 3 of the Madras City Police Act read with Section 49-A(1)(a)(i) of the said Act does not give room for such an interpretation and does not exclude from, its purview and mischief the case of a person who receives money from other persons who wished to place bets on horses, to be run on any particular horse race and in accordance with the directions of those persons, goes to the place in the race enclosures set apart for that purpose on the day the race is to be run and buys betting tickets on behalf of such persona and then collects the winning or prize money in respect of the winning tickets on behalf of such persons and distributes such winning or prize money to the persons who so gave the money for the purpose of laying such bets.

11. Therefore the conviction of the revision petitioners 1 and 2 in both these cases of an offence under Section 49-A(1)(a)(i) of the Madras City Police Act, is quite correct and the same is confirmed as also the sentences meted out to them.

12. Coming now to revision petitioners 3 to 6 in Crl. R.C, 1041 of 1973, it is seen from the evidence that the third revision petitioner was sitting in the place in the front of the cash chest while revision petitioners 4, 5 and 6 were sitting in front of the bill books and the third revision petitioner was receiving money from revision petitioners 7 and 8. This evidence makes it clear that revision petitioners 3 to 6 were also assisting revision petitioners 1 and 2 in collecting such bets from other persons and they were also using the premises for that purpose. Therefore they were also using the aforesaid premises for the purpose of gaming on a horse and as such their conviction for an offence under Section 49-A(1)(a)(i) of the Madras City Police Act is quite correct and is confirmed as also the sentences meted out to them; but the conviction of revision petitioners 7 and 8 of that offence cannot be sustained, for they merely went to the premises to pay money to revision petitioners 3 to 6 for laying the bets and it cannot be said that they are also owners or occupiers or having the use of any house, room or place nor can they be said to have opened, kept or used the premises for the purpose of gaming on a horse. Therefore, the conviction of revision petitioners 7 and 8 is set aside and they are acquitted of that offence and the fine amount, if paid by them, should be refunded

to them.