

In Re: Ganapathi Sa and ors.

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Court : Chennai

Decided On : Sep-12-1941

Reported in : AIR1942Mad354; (1942)1MLJ357

Appellant : In Re: Ganapathi Sa and ors.

Judgement :

Horwill, J.

1. At a raid conducted by P.W. 1 at 9-40 P.M. on the 29th July, 1939, at No. 33, Mint Street, on a warrant issued by the Assistant Commissioner, North Range, on information, furnished that this house was being used as a common gaming house, twenty persons were found therein sitting at a table with paper and pencil and boards and betting slips before them, making calculations with regard to bets laid on a race that had been run that day at Calcutta; and before the accused was found a bag of money containing Rs. 1,290-13-8. The betting slips were for a sum of money exceeding Rs. 5,000. Two persons numbered as accused 2 and 10 were not tried because they could not be found. Accused 19 and 20 were acquitted. The remaining 16 persons, who are the appellants here, were all convicted. Accused 1 and 5 were found guilty under Sections 37 (2) and 45 of the Madras City Police Act and others under Section 45 of the same Act.

2. No. 33, Mint Street, having been searched on a warrant properly issued under Section 42 of the Madras City Police Act, the finding of the betting slips and money

obviously connected with gaming is itself evidence under Section 43 of the Act that that house was used as a common gaming house and that the persons found therein, the appellants and others were there present for the purpose of gaming. There is evidence that the fifth accused had taken on lease the upstairs of that house--where all the appellants were found--from accused 19 and 20, who were acquitted. P.W. 2, one of those present, who was taken as an approver, deposed that the fifth accused took bets. P.W- 2's oral evidence and the statutory evidence under Sec. 43 was sufficient to establish the guilt of the fifth accused under Section 37 (2) and Section 45, which are the two sections under which he has been convicted. So far as he is concerned, therefore, this appeal must be dismissed.

3. The really important question in this case is whether the other appellants were guilty under Section 45 of assisting in conducting the business of a common gaming house. The evidence of P.W. 2 discloses that the 1st accused used to receive bets from punters of over Rs. 500; but he does not say that the first accused received these bets in No. 33, Mint Street. He lived in the adjoining house, No. 32, Mint Street, and so it is quite probable that he received the bets there. P.W. 2 deposes that the top of No. 33, was not used permanently for any purpose by the first accused. He said that the first accused is the organizer of what is known as the 'New Sports Club' and P.W. 2 claims to be the manager of that club. From P.W. 2's evidence it is evident that that club has no fixed abode and is a mere organization. The first accused employs a number of agents--some of whom are appellants in this case--to go into the highways and by-ways to offer and accept bets with regard to races that are taking place in various parts of India. Each agent has a particular area within which he operates. He brings the money--or a portion of it--and the betting slips to the first accused, who makes himself responsible for the payment of the winners. He pays to the agents who accepted the bets from the winners the money to be handed over to them. On the night in question they had gathered together in the upper room of No. 33, Mint Street, so that the agents could bring to the first accused the money that they had taken and the betting slips; and a number of other persons had also gathered there to assist the agents and the first accused in calculating what money had to be paid to what punter as a result of a race which had been run only a few hours before.:

4. Two questions arise from this evidence. One is whether the first accused can be considered to have been running a common gaming house, and the other is whether the other accused can be found guilty of assisting in the conducting of this common gaming house either by the fifth accused or by the first accused. There is no evidence to show whether or not the punters knew of the existence of the first accused or whether they dealt with the agents as agents of either the first accused or some undisclosed principal or looked upon them as principals. The view most favourable to the various accused is that the punters were dealing with the agents as principals. As I have pointed out above, the agents, after they have accepted money from punters, bring it to the first accused together with the slips, and after the race has been run and calculations made, the first accused gives the winnings to the agent responsible for payment to the punter. It is conceded that calculations are not part of the betting nor are payment of winnings to the agents. The learned Crown Prosecutor argues, however, that the payment by the agents to the first accused is part of the betting itself. I do not see how that can be the case. The contract of betting is between the punter and the agent, and the receipt of the money by the agent, whether he holds himself out to be the agent or not, is for the purpose of the contract a receipt by the principal himself. Whether the agent takes that money and gives it to the principal or whether he keeps it himself cannot in any way affect the contract, and the carrying of that money to the principal can form no part of the contract itself. That being so, the receipt of the money by the first accused in the upper room of No. 33, Mint Street, was not a part of the betting itself. The first accused was not, in the words of the definition of a 'common gaming house' keeping or using or permitting to be kept or used a place for the purpose of gaming on a horse race. The first accused was not therefore keeping a common gaming house.

5. Such appellants as were merely calculators were in that house for the purpose of assisting the first accused and not the fifth accused. If it had been proved that the first accused had been keeping a common gaming house either at No. 33, Mint Street, or at any other place, known or unknown, then the persons who were there making calculations would have been guilty of assisting the first accused in conducting the business of that common gaming house; but since, the first accused was not keeping or using or permitting to be kept or used any place for

the purpose of gaming; on a horse race, these persons could not have been assisting the first accused in opening, keeping or using or permitting to be opened, kept or used a common gaming house. It is however argued that even though that may be so, they were assisting the fifth accused in conducting a common gaming house. That however cannot be the case; for it is no part of the purpose of a common gaming house to lease it to others for the purpose of conducting their business of organizing betting. The purpose of a common gaming house is to afford a place where members of the public can come and lay bets with some persons who resort* there. The persons who work there that night were not betting with the fifth accused; nor were they assisting him in any way. They were there solely for the purposes of the first accused. The calculators cannot therefore be said to have been assisting either the first accused or the fifth accused in the conducting of a common gaming house. It follows that the appellants other than, the fifth accused are not guilty of the offence for which they have been convicted.

6. There is definite evidence in the deposition of P.W. 2 that the 14th accused was one of the agents of the first accused and that he had brought some betting slips to the first accused that day in connection with the race that had just been run. It is clear therefore that the fourteenth accused had been betting either on that day or a day or two before. He was therefore guilty under Section 37 (3) of betting on a horse race. There is similar evidence against the fifth accused; but as his conviction under Sections 37 (2) and 45 of the Act has 'been upheld, there is no need to convict him further under Section 37 (3). The learned Counsel for the fourteenth accused contends that as he was not specifically charged with the offence of betting outside No. 33, Mint Street, he ought not to be convicted of it. This is however a summons case and it is not illegal to convict an accused of an offence not specified in the charge sheet laid by the Police, provided of course the accused is not prejudiced by the consideration of some charge of which he knew nothing until the Magistrate came to write his judgment. In view of the nature of the information laid by the Police and the evidence in the case, I do not think that the fourteenth accused has been prejudiced by his attention not having been drawn specifically to the possibility of his being convicted of betting before he came to No. 33, Mint Street. The conviction of the fourteenth accused under Section 45 of the Act is therefore set aside and he is convicted instead under Section 37 (3).

The sentence of Rs. 75 fine, which is not an excessive punishment for an offence under Section 37 (3), will stand.

7. The first accused abetted all the betting of his agents, and it is clear that these agents were expected to make bets with members of the public and bring the money and the betting slips to him. I have no doubt therefore that he is guilty under Section 37 (3), read with Section 109, Indian Penal Code. His sentence, as an abettor, will be 'reduced to Rs. 75, the sentence awarded to the fourteenth accused, a principal. The sentence of imprisonment is set aside.

8. The convictions and sentences of the other appellants are set aside and the fines, if paid, ordered to be refunded.

9. The order as to the confiscation of the money in the hands of the first accused will stand, because it is quite clear that all the money in his possession that day was money that he had obtained as the result of offences committed under Section 37 (3) of the Act.

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