

In Re: Periaswami and ors.

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Court : Chennai

Decided On : Dec-12-1961

Reported in : 1962CriLJ490; (1962)2MLJ180

Appellant : In Re: Periaswami and ors.

Judgement :

ORDER

Sadasivam, J.

1. The first petitioner has been convicted under Sections 8 and 9 of the Madras Gaming Act and sentenced to pay a fine of Rs. 100 and Rs. 15, respectively, in default to undergo simple imprisonment for two weeks and one week; the other petitioners have been convicted under Section 9 of the same Act and fined Rs. 15 each, in default to undergo simple imprisonment for one week. On appeal the convictions and sentences have been confirmed by the learned District Magistrate (Judicial) South Arcot.

2. The only point urged in this Criminal Revision Case is that the petitioners should have been acquitted under Section 247 of the Code of Criminal Procedure on account of the absence of Sri Devakribai, the Sub-Inspector of Police, who filed the charge-sheet in the case. The Deputy Superintendent of Police who conducted the raid has been examined as P.W. 5 in this case; and he has given evidence that he directed the Sub-Inspector of Police Sri Devakribai, to file the charge-sheet

in this case. The learned advocate for the petitioners relied on the decision in *Public Prosecutor v. Ramiah* (1958) M.L.J.189 : (1958) 1 An.W.R. 145, in support of his contention that the charge-sheet filed by the Sub-Inspector of Police for offences under the Gaming Act, without the order of the Magistrate to investigate into the offence, is really a complaint and that the Magistrate should have acquitted the accused under Section 247, Criminal Procedure Code, for the non-appearance of the Sub-Inspector of Police who filed the charge-sheet. The decision in that case was in respect of an offence under Section 12 of the Gaming Act. Under Section 13 of the Gaming Act ' Any police officer may arrest without a warrant any person committing, in his view, any offence, made punishable by this Act. ' It is pointed out in that decision that Section 13 of the Gaming Act does not give an unrestricted power of arrest to a police officer but gives him only a limited power in that he can arrest without a warrant only if the offence under the Gaming Act is committed, in his view, but not otherwise. It is also pointed out in that decision that it is not for all offences under Section 12, but only for some that a police officer may arrest without a warrant and that it follows that an offence under Section 12 of the Gaming Act is not a cognizable offence within the meaning of Section 4 (f) of the Code of Criminal Procedure and the police officer cannot investigate into it without the order of the Magistrate as required by Section 155 (2), Criminal Procedure Code. On the same reasoning it can be argued that even offences under Sections 8 and 9 of the Gaming Act are not cognizable offences within the meaning of Section 4 (f), Criminal Procedure Code.

3. But the above decision is no authority for the position that a Magistrate should acquit an accused under Section 247, Criminal Procedure Code. It is clear from the decision in that case that the witnesses and police officers did not turn up for six hearings of the case and the Magistrate acquitted the accused after intimating the final hearing of the case to the police. Section 247, Criminal Procedure Code, no doubt enjoins on the Magistrate to acquit the accused for the non-appearance of the complainant. But it also gives power to the Magistrate to adjourn the hearing of the case to some other day for proper reasons. In fact, the Proviso enables a Magistrate to dispense with the personal attendance of the complainant when it is not necessary. The Magistrate in this case has adjourned the case several times and after several hearings he convicted the petitioners, on the evidence on record.

There is nothing illegal in the procedure adopted by the learned Magistrate. Even at the time of taking the complaint on file under Section 200, Criminal Procedure Code the Magistrate is not bound to examine the complainant on oath in any case in which the complaint has been made by a public servant acting or purporting to act in the discharge of his official duties. There is no mandatory provision requiring a Magistrate to acquit an accused in a case of this kind.

4. No other point was urged in this Criminal Revision Case.

5. The Petition is dismissed.

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