
(2001) 07 KL CK 0054
In the High Court Of Kerala
Case No : Criminal R.P. No. 86 of 1994

Aboobacker

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 457, 458, 459
Kerala Gaming Act, 1960 — Section 10, 7, 8

Citation : (2001) 07 KL CK 0054

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, for the Appellant; P.K. Babu, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy,J.

1. Petitioners were accused 1,3 and 4 in S.T.No. 1444 of 1987. The charges were under Ss. 7 and 8 of the Kerala Gaming Act. The prosecution case was that on 13.7.1987 at about 4.35 AM the accused were playing cards for unlawful gain in a room of the building owned and possessed by the first accused at Tirur. An amount of Rs. 4,436/-, 44 cards cigarette packets, beedi packets, cigar lighter etc. were seized from the place as per Exts. P1 and P2 seizure mahazar. There were originally six accused. Two of them admitted the guilt and the present petitioners in the petition were acquitted. According to the prosecution, the accused were playing a game called 'Pullivali' with cards and money for unlawful gain. They were given the benefit of doubt and acquitted. Thereafter, petitioners claim to return the money seized from them. The lower court found that they are not entitled to return the money under S. 542 of Criminal Procedure Code. S. 452 of the Criminal Procedure Code reads as follows:

‘ ‘ 452. Order for disposal of property at conclusion of trial-

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-s. (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-s. (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-s.(1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Ss. 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-s.(2), an order made under sub-s.(1) shall be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "Property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the prosecution or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

It was also found that they had no case while giving 313 statement that money belonged to them. Further, the ownership of the money was not proved, apart from the fact the above money along with the playing cards were seized for the place of occurrence.

Petitioners then filed a revision petition before this Court as CrI.R.P.No. 680 of 1992. There the contention raised was that the seizure was under the Kerala Gaming Act and disposal of the property seized should be done as per S. 10 of the Kerala Gaming Act and not under S. 452 of the Cr.P.C. The matter was remanded as that question was not considered. S. 10 of the Kerala Gaming Act provides as follows:

"10. Instruments of gaming may be ordered to be destroyed on conviction :- On conviction of any person for keeping or using any such common gaming house or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming, found therein to be destroyed, and may also order all or any of the securities for money and other articles seized not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited;

or in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled".

2. It is the contention of the petitioners that since petitioners were acquitted, S. 10 is not applicable as only the convicting Magistrate has got power to forfeit the money seized. Since they were acquitted, the money cannot be forfeited as Magistrate is not the convicting Magistrate. It is true that with regard to disposal of the property seized under the Kerala Gaming Act, S. 10 is the relevant Section wherein the convicting Magistrate has given powers to forfeit the amount or return the amount to the persons entitled to. Here as far as the petitioners are concerned, even though the Magistrate had acquitted them it is not proved that the money belongs to them. In the seizure mahazar it was stated that the amount along with playing cards were seized from the place. Apart from their statement that it belongs to them there is no proof that the amount was owned by them. They did not claim ownership of money even in 313 statement. In cases where the accused were acquitted, what should be done with the seized properties is not mentioned in the Kerala Gaming Act. In such cases the magistrate can rely on the provisions of the Cr.P.C. Further, in this case, two persons admitted guilt. Money may belong to them as it was seized from the place of occurrence with cards. Petitioners were only given the benefit of doubt. I am of the opinion that the provisions in the section should be read in a pragmatic way. The word "convicting Magistrate" should be read as to understand that the Magistrate who is passing the judgment either convicting the accused or acquitting him and he has power to pass orders regarding disposal of the property seized. Magistrate has got discretion even under S. 10 and he need release the money seized only in appropriate cases (See last part of S. 10). Therefore, discretion is given to the Magistrate. But for S. 10 there is no provision in the Gaming Act regarding disposal of the property seized, if the accused are acquitted. Further, property seized need be returned only to persons from whom it was seized or to the owner. Here no evidence was adduced to show that the amount was owned by the petitioners except the fact that it was seized from the place of occurrence.

3. In the above circumstances, I am of the view that no interference is called for by this Court. The Criminal Revision Petition is, therefore, dismissed.