
(1957) 06 MP CK 0009
In the Madhya Pradesh High Court
Case No : Criminal Ref. No. 132 of 1957

Babulal APPELLANT
Vs
State RESPONDENT

Date of Decision : 04-06-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 517, 520

Citation : (1957) JLJ 976

Hon'ble Judges : Samvatsar, J

Bench : Single Bench

Judgement

Samvatsar, J.—This reference is made by the Sessions Judge, Bhopal against an order passed by the First Class Magistrate, Bhopal with respect to disposal of some property produced before him by the police.

2. Facts of the case are that on 7-11-1956 at about 12-30 a.m. the police raided the house of the Petitioner and in the search that followed, seized certain playing cards and cash. It was alleged by the prosecution that the Petitioner and other persons were gambling and that the cards and money which was seized in the search were instruments of gaming. Upon these facts, the Petitioner and other persons were prosecuted. The Petitioner was charged for offences under Sections 3 and 4 of the Gambling Act. The learned Magistrate, however, found all the accused not guilty and acquitted them, by his judgment doled 9-7-1957. He however, ordered that the amount seized by the police in their search be forfeited to the Government and the playing cards should be destroyed.

3. The Petitioner filed a revision application to the Sessions; Judge, Bhopal against the order of the Magistrate forfeiting the amount seized. The learned Sessions Judge was satisfied that the order of the Magistrate on this point was not according to law and has referred the matter to this Court with a recommendation that the same be quashed and the amount seized may be returned to the Petitioner.

4. The reference is not opposed by Mr. Bhambhani, learned Government Advocate and in my opinion, he was quite right in doing so. The learned Magistrate ordered the amount to be forfeited because he believed that the Petitioner had disclaimed the ownership of the money. This is far from correct. The Petitioner in his statement before the learned Magistrate has claimed the money to be his. What was denied by him was that the money was seized on the spot as alleged by the prosecution, his contention being that Rs. 65 were recovered by the police from his pocket and Rs. 350 were forcibly removed from his box. The observations of the Magistrate that the Petitioner disclaimed the money is not correct. The order passed by the Magistrate must therefore be set aside. Apart from this, according to prosecution, case itself, the amount in dispute was seized from the house of the Petitioner and when he was acquitted, the proper order would be to return it to the person from whose possession it was seized.

5. Before concluding the judgment, I wish to point out that the order passed by the Magistrate being one u/s 517 Criminal Procedure Code, the learned Sessions Judge himself had power to pass an appropriate order u/s 520 Criminal Procedure Code. It has been held by a Full Bench of the High Court of Bombay in *Walchand Jasraj Marwadi Vs. Hari Anant Joshi*, that Section 520 means that any court which has powers of appeal, confirmation, reference or revision in respect of the trial Court, that being the Court subordinate thereto referred to in the section, can make any substantive order in respect of the property dealt with by the trial Court under Sections 517, 518 or 519.

6. It is no doubt true that the Sessions Judge has no general power of making orders in revision. He can only enquire into the matter before the subordinate Courts and if necessary, refer to the High Court for orders u/s 438. But Section 520 makes it unnecessary for a subordinate Court of revision to adopt that course in matters within that section. If an application is made to the Sessions Court as a Court of revisional powers in respect of the trial Court in regard to orders relating to property made under Sections 517, 518 and 519 Criminal Procedure Code, then the Sessions Judge can himself make an appropriate order and need not refer the matter to the High Court. (See *Walchand Jasraj Marwadi Vs. Hari Anant Joshi*,

7. The High Court of Madras has also recently taken the same view in *Assistant Collector v. Krishna* AIR 1956 Madras 42. It was under the circumstances unnecessary for the Sessions Judge to refer the matter to this Court, It is however unnecessary to send back the case again. I set aside the order passed by the trying Magistrate and direct that the amount in dispute be returned to the Petitioner.