
(1987) 11 KL CK 0018
In the High Court Of Kerala

C. Govindaraj

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-11-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1988) CriLJ 485 : (1988) 1 KLJ 18

Hon'ble Judges : U.L. Bhat, J;P.K. Shamsuddin, J

Bench : Division Bench

Judgement

U.L. Bhat, J.—Petitioner herein filed CrI. M. P. 489(a) of 1983 in C.C. 1250 of 1982 on the file of the Judicial Magistrate of the Second Class, Trivandrum u/s 482 of the Code of Criminal Procedure seeking return of cash amount of Rs. 19,508.50 involved in that C.C. case on the ground that it belonged to him and was not related to gambling activity conducted in that case. The learned Magistrate declined to return the money to the petitioner and ordered the same to be confiscated. This order, having been confirmed by the Sessions Court in appeal, this revision is filed. A learned single Judge of this Court passed an order referring the case to a Bench of two Judges on the ground that the answer to the question which has been raised will have far-reaching effect.

2. It appears, in 1982, under the auspices of the Trivandrum City Corporation, an exhibition was arranged in the Putharikandam grounds at Trivandrum. It appears a person by name A. Babu, obtained a right to play games of mere skill in one of the stalls and appointed the first accused (revision petitioner herein) as cashier with effect from 13-5-1982. On that night at about 9-30 p.m. Assistant Commissioner (L & O), Trivandrum City, searched the premises. He found games covered by the provisions of the Kerala Gaming Act being conducted in the premises under the direct supervision of the first accused and in complicity with some members of the public. He also found the first accused sitting in a chair by the side of a table on which was placed a trunk. The trunk contained gaming tokens and cash of Rs. 19,508.50. These articles as well as articles used for

games such as boards and arrows were seized and 18 persons were arrested. Ultimately charge was, laid against them.

3. Initially 14 accused, namely, those other than accused Nos. 1, 2, 6 and 10 appeared in the court below which framed charge against them under Sections 6 and 7 of the Kerala Gaming Act. They pleaded guilty to the charge. The trial court accepted the plea as made freely and voluntarily and proceeded to convict and sentence those accused. The judgment of conviction did not contain order for disposal of property. That was because accused 1, 2, 6 and 10 who also appeared on the same day, pleaded not guilty and those accused wanted to go for trial. They were tried in due course and for want of evidence (evidently because the prosecution did not produce the relevant evidence, though available, they were acquitted. In the judgment of acquittal also, no order for disposal of property was passed.

4. Subsequently on behalf of the first accused Crl. M.P. No. 3247 of 1983 was filed seeking an order directing return of cash amount to him. On 27-9-1983, a petition was filed on behalf of A. Babu, supported by his affidavit stating that since the first accused had to meet the loss sustained by A. Babu, the money in question may be paid over to the first accused. However, the two courts below declined to uphold the claim made on behalf of the first accused.

5. The main reason which weighed with the courts below in rejecting the claim put forward by the first accused was that the case had ended in conviction of 14 among the 18 accused and, therefore, the property connected with that offence must be confiscated to the State and not returned to the first accused, though he was acquitted. The answer provided by the revision petitioner is that he is unconcerned and unaffected by the conviction entered against other accused since he himself was acquitted.

6. It is open to the criminal court, while passing an order for disposal of property, to look into the case diary statements and other records available in the court to determine the manner in which property is to be disposed of. The fact remains that 14 among the 18 accused suffered conviction for offences under Sections 7 and 8 of the Kerala Gaming Act. The case charged against all the 18 accused, including the revision petitioner, was a single case which arose on account of detection of offence in a particular premises and which concerned all the accused. Even ignoring the conviction of some of the accused, the record of investigation would clearly show that game prohibited by the provisions of the Kerala Gaming Act was being conducted in the premises and the trunk in which the cash amount was found contained not only the cash amount but also gaming tokens. Besides these articles, the game instruments were also seized. Going by these materials, there can be no doubt that the cash amount seized was connected with the gaming activity which is prohibited under law. Since these materials are available on record, it matters little that the first accused himself was acquitted of the charge. This is particularly so in view of the fact that 14 out of 18 accused originally charged in the same case were convicted. Even ignoring the fact of

conviction, we are of the opinion that the materials are sufficient to show that the cash amount involved in this case was connected with the prohibited gaming activity. That being so, the courts below were completely justified in confiscating the amount and in not directing o return the money to the first accused.

7. The question referred to the Division Bench is "whether the finding against some of the accused who pleaded guilty, could be made use of for disposal of property when some accused had been acquitted of the same charge". As we have already pointed out, in passing an order of disposal, it is open to the Court to look at all available materials. It would be open to the Court to look at the materials collected during investigation and other materials on record. Those materials must certainly take in the judgment of conviction against some of the accused who figure in the charge-sheet laid by the Investigating Officer, It is not a question of the Court making use of the judgment of conviction against the accused who have been acquitted. It is more a question of the Court finding materials on the basis of which a proper finding regarding disposal of property is to be arrived at. We see no reason why the judgment of conviction of some of the accused cannot be looked into for the purpose of arriving at a finding. We do not think there can be any difference in principle between a common judgment by which some are acquitted and some others are convicted and two separate judgments arising from the same occurrence and the same charge, one leading to acquittal and other leading to conviction, there being two trials for various technical reasons. In either case, the finding of conviction cannot be said to be binding against the accused who was acquitted. But the materials on record and also the findings are relevant in arriving at a finding as to what should be the proper way of disposal of the property.

In the result, the Crl. R.P. is dismissed.