
(2002) 09 AP CK 0027

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3965 of 2002

D. Krishna Kumar and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Andhra Pradesh Gaming Act, 1974 — Section 15, 3

Citation : (2002) 5 ALT 806 : (2002) 3 APLJ 211 : (2003) CriLJ 143 : (2003) 1 RCR(Criminal) 761

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : V. Venkaramana, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—On information that the management of Elite Club, situated at Road No. 9-A Jubilee Hills, Hyderabad is collecting huge amounts from players of Rummy with 13 cards/Syndicate in its premises and is using the premises as a common gaming house, on search proceedings issued by the Assistant Commissioner of Police, Banjara Hills Division, Hyderabad, Jubilee Hills Police raided the Elite Club premises being managed by the petitioners, and found 40 persons playing Rummy (13 card game/ Syndicate) on 7 tables, by each player contributing Rs. 500/- to the Syndicate pool/ and each table giving Rs. 500/- to the club. In the 2nd floor they found 46 persons at 6 tables playing game of Rummy with 13 cards/Syndicate. In the 3rd floor they found 6 persons playing Rummy on the table and in the 4th floor they found 42 persons playing, at 8 tables, the game of Rummy with 13 cards/Syndicate, by each player contributing Rs. 1,000/-. Rs. 1,000/- was paid to the club by each table. In total Rs. 1,43,170/-was collected by the club from the players from all the tables in the premises and, therefore, a case in Crime No. 252 of 2002 was registered by the S.H.O. Jubilee Hills Police Station.

2. The prosecution case is that petitioners, who are in management of the affairs of the Elite Club, are making huge profits by allowing people to play the game of Rummy with 13 cards/Syndicate in the club premises, and so the premises of the club is a "Common gaming house" as defined u/s 2(1) of the A.P. Gaming Act, 1974 (the Act) and so petitioners are liable for punishment u/s 3 of the Act.

3. By this petition petitioner is seeking to quash the FIR in Crime No. 252 of 2002 of Jubilee Hills Police Station registered u/s 3 of the Act.

4. The main contention of Sri V. Venkataramana, the learned counsel for the petitioners is that even assuming that all the averments in FIR and Panchnama are true, no offence under the Act is made out against the petitioners because Rummy is but a game of skill, and since as per Section 15 of the Act and the other provisions of the Act would not apply to games of skill. He relied on Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another, and Executive Club formed by Lalitha Real Estates Pvt. Ltd., Vijayawada and others Vs. State of A.P., in support of his contention.

5. The contention of the learned Additional Public Prosecutor is that since the case is still under investigation and since the Panchnama shows that more than one lakh forty thousand rupees was collected from the players playing the game of Rummy in the premises being managed by the petitioners. It is prima facie clear that petitioners are making huge profit by allowing people to play Rummy in the premises being managed by them, and therefore, in view of observations in State of Andhra Pradesh Vs. K. Satyanarayana and Others, the premises, where Rummy is being played, would fall in the net of the definition of "common gaming house" in the Act. He also places strong reliance on Twin Cities Cinema Cultural Centre, Jubilee Hills v. Commr. of Police (2002) 2 ALD 232, where my learned Brother A. Gopal Reddy, J. following K. Satyanarayana Case (supra) held that if the club is making profit out of the game of Rummy the provisions of the Act would apply.

6. In reply the contention of Sri V. Venkataramana, learned Counsel for petitioner is that an appeal against the judgment in Twin Cities Cinema Cultural Centre, a Division Bench of this Court in W.A. No. 1167 of 2002, dated 29-7-2002, clarified the order of the learned single Judge observing as follows :

"Therefore, the police authorities cannot obstruct the writ petitioner-club from conducting card room where the members and guests of the writ petitioner's cultural center are allowed to play the game of rummy with stakes/syndicate (thirteen card game). At the same time, we make it clear that the police is always at liberty to enter the premises and check as to whether the cultural center of the club is conducting card room where the members and guests of petitioner's cultural center are playing the game of rummy with stakes/syndicate (thirteen card game) for the purpose of verification. If they receive any intimation, the police may enter the club and verify the same and proceed further if the members and guests of writ petitioner's cultural center play other

than the game of rummy with stakes/syndicate (thirteen card game) the police authorities are also at liberty to proceed with the cases, which are already registered."

and contends that from the said observation it is clear that allowing playing rummy with stakes in a premises would not attract the provision of the Act. 7. I feel it necessary to state that a Division Bench of this Court in *Cherupu Venkata Varaha Narasimham Vs. State of Andhra Pradesh*, , referred to in *Twin Cities Cinema Cultural Centre Jubilee Hills Case 2002 (2) ALD 232* (supra) decided on 31-7-1967, did hold that game of Rummy is not a game of mere skill though it does involve certain amount of skill. But in *State of Andhra Pradesh Vs. K. Satyanarayana and Others*, decided on 23-11-1967 the Supreme Court held :

"The game of rummy is not a game entirely of chance like the "three-card" game mentioned in the Madras Case to which we were referred. The "three card" game, which goes under different names such as "flush", "brag" etc., is a game of pure chance. Rummy on the other hand, requires certain amount of skill because the fall of the card has to be memorized and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the Same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out there is an element of chance because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone, it cannot be said that Rummy is a game of chance and there is no skill involved in it." (underlining mine).

In view of the above decisions of the Supreme Court holding that Rummy is mainly and predominantly a game of skill, the Division Bench decision of this Court in *Venkat Varha* (supra) should be deemed to have been impliedly overruled by the Supreme Court.

8. The Supreme Court in *Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another*, after referring to *The State of Bombay Vs. R.M.D. Chamarbaugwala*, and *R.M.D. Chamarbaugwala Vs. The Union of India (UOI)*, rendered by four Judges Bench of the Supreme Court, held in para 9 at page 1158 (of AIR) as follows :

"This Court, therefore, in the two *Chamarbaugwala* Cases, has held that gambling is not trade and as such is not protected by Article 19(1)(g) of the Constitution. It has further been authoritatively held that the competition which involved substantial skill are not gambling activities. Such competition are business activities, the protection of which is guaranteed by Article 19(1) of the Constitution....."

and at para 17 at page 1161 (of AIR) while observing :

"This Court held the game of Rummy to be a game of mere skill".

held as follows in para 18 at page 1162 (of AIR) :

"The judgments of this Court in the two Chamarbaugwala Cases and in Satyanarayana Case clearly lay down that :

(i) Competition where, success depends on substantial degree skill are not "gambling and (ii) despite there being an element of chance is a game is predominantly a game of skill it would nevertheless be a game of "mere skill". We therefore hold that the expression "mere skill" would mean, substantial degree or preponderance of skill".

(Underlining mine).

9. State of Andhra Pradesh Vs. K. Satyanarayana and Others, referred to above arose under the provisions of Hyderabad Gaming Act. As seen from the said judgment: the provisions in Hyderabad Gaming Act are not in pari materia with the provisions of the Act. Section 7 of the Hyderabad Gaming Act provided a presumption that when cards, dice or table or other instruments of gambling are found in a house or premises, it shall be evidence until the contrary is proved, that such house or premises is used as a common gambling house. In fact in that case evidence on the aspect that the club was making profit was led. The trial Court held that the presumption was not successfully repelled by the accused in that case. After the Sessions Judge made a reference to the High Court the accused i.e. the club, was acquitted on the ground that it was not, making profit, but was charging some amount as service charges. In that connection the Supreme Court, considered the question relating to the charge against the accused club, that by charging 5 points on each game of Rummy it was making a profit.

10. Section 2(1) of the Act defines "Common Gaming House". As per explanation to that sub-section any club, society, etc., whether incorporated or not, when is being used for "gaming", would be deemed to be a "Common Gaming House". "Gaming" is defined in Sub-section (2) of Section 2 of the Act. Section 3 of the Act provides the punishment for opening and running of a common gaming house. Section 4 provides the penalty for persons found in common gaming house. Section 5 relates to power to issue warrant to enter a common gaming house. Section 6 enables drawing a presumption being drawn that a place, where instruments of gaming are found during search u/s 5, is a common gaming house. Section 7, exempts application of the provisions of Sections 4 to 6 in certain cases. As per Section 8 instrument of gaming, etc., found in a common gaming house can be ordered to be destroyed or forfeited on conviction Section 9 relates to gaming in public street or place. Section 10 empowers police officer arresting without warrant persons gaming in public street or place. Section 11 empowers a presumption being drawn of gaming, in case of seizure u/s 10. Section 12 empowers ordering destruction or forfeiture of instruments of gaming on conviction of a person u/s 9 of the Act. Section 13 relates to indemnity to witnesses. Section 14 provides from payment of portion of fine to informants.

Section 15 reads "Nothing in this Act shall apply to games of skill only, where ever played".

11. Section 11 of A. P. (Andhra Area) Gaming Act, 1930 repealed by Section 17 of the Act laid down "Nothing in Sections 5 to 11 of this Act shall be held to apply to games of mere skill wherever played". Section 14 of Hyderabad Gambling Act also used the words "mere skill". In my considered opinion the expressions "games of skill only" and "games of mere skill" are synonymous and mean the same thing. Since the Supreme Court in *Dr. K. R. Lakshmanan Vs. State of Tamil Nadu* and another, held that "mere skill" means substantial and preponderance of skill, and further held that the game of rummy is a game of "mere skill" approving the view taken in *Satyanarayana* case (supra) that the game of rummy is mainly and preponderantly a game of skill, Section 15 of the Act would come into operation and so none of Sections 2 to 14 apply to the game of rummy wherever played.

12. It is well known that penal statutes should be strictly construed and benefit of any loophole in the statute is to be given to the accused. In *Spicer v. Holt* (1976) 3 All ER 71 at 78, 79, the House of Lords held that when in a statute dealing with a criminal offence infringing upon the liberty of a citizen, a loophole is found, it is not for Judges to cure it, for it is dangerous to derogate from the principle that a citizen has a right to claim that however much his conduct may seem to deserve punishment, he should not be convicted unless that conduct falls fairly within the definition of the crime of which he is charged. Therefore it is for the legislature to intervene and amend the Act, laying down that playing Rummy with stakes would also be "gaming" within the meaning of the Act. So, till such time as the Act is amended laying down that playing Rummy with stakes is "gaming", playing Rummy with stakes is not "gaming" within the meaning of the Act, in view of Section 15 of the Act read with the above two decisions of the Supreme Court. In fact in *Executive Club formed by Lalitha Real Estates Pvt. Ltd., Vijayawada and others Vs. State of A.P.*, my learned Brother B. Sudershan Reddy, J. also took a view that playing Rummy with stakes is not an offence within the meaning of the Act.

13. In *Twin Cities Cinema Cultural Centre*, case (2002 (2) ALD 232) (supra) a Writ Petition was filed seeking a direction to the Commissioner of Police and others not to interfere with the activities of the club in conducting the card room where the members are allowed to play the game of rummy with stakes (13 cards game). In the counter affidavit filed on behalf of respondent it was alleged that the petitioner club was indulging in illegal activities, and that its members and guests are playing three card game and so cash was seized, and members playing the game were arrested and cases were registered under Sections 3 and 4 of the Act. In view thereof, and in view of the observations made in *State of Andhra Pradesh Vs. K. Satyanarayana and Others*, reading "If there is evidence of gambling in some other way or that the owner of the house of the club is making profit or gain from the game of Rummy or any other game played for

stakes, the offence may be brought home", the learned Judge dismissed the writ petition. On appeal by the writ petitioner in Writ Appeal No. 1167 of 2000, a Division Bench of this Court presided over by My Lord The Chief Justice, clarified the order of the learned single Judge, as extracted above.

14. From the above clarification of the Division Bench of this Court also, it is clear that conducting card room where members and guests play the game of rummy (13 card game) with stakes/syndicate would not attract the provisions of the Act. That must be the reason why the writ petitioner club were permitted to run the card room for members and guests playing the game of rummy (13 card game) with stakes/syndicate, by the Division Bench.

15. In view of Section 15 of the Act, the provisions of the Act do not apply to game of rummy, which is to be treated as a game of skill only. Therefore, the question whether the management of the club or the club is making profits, and what is the rate of profit that is being made from out of the game of rummy with 13 cards/syndicate may not be of any relevance. Therefore, even if the petitioners, who are running the club that was raided by the police, were making profits by allowing persons to use the premises for playing the game of rummy with 13 cards/ syndicate, they cannot be said to be running a "common gaining house" as defined in Section 3 of the Act, because Section 3 of the Act, in view of Section 15 of the Act, does not apply to a place where Rummy is being played.

16. Therefore, the Criminal Petition is allowed and the FIR in Cr. No. 252 of 2002 of Jubilee Hills Police Station. Hyderabad, registered u/s 3 of the Act is quashed. It is needless to mention that the property seized from the petitioners shall have to be returned to them.