

(1998) 08 AP CK 0024

In the Andhra Pradesh High Court

Case No : Criminal P. No. 1559 of 1998

Executive Club formed by Lalitha Real Estates Pvt. Ltd.,
Vijayawada and others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:

Andhra Pradesh Gaming Act, 1974 — Section 15, 2, 2(2), 2(4), 3
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1998) 5 ALD 126 : (1998) 2 ALD(Cri) 569 : (1998) 2 ALT(Cri) 207 :
(1998) 3 APLJ 138 : (1999) CriLJ 35

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. Vedula Venkataramana, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This is an application filed u/s 482 of the Code of Criminal Procedure, 1973, to quash the proceedings in Cr.No.406/97 of P.S., Machavaram, Vijayawada City (On the file of the III Metropolitan Magistrate, Vijayawada).

2. Petitioner Nos. 2 to 52 are the accused in the said crime. The allegations levelled against them, may briefly, be noticed. In the charge-sheet it is alleged that Petitioner Nos.2 to 49, who are A1 to A-48 are the residents of Vijayawada and they are landlords and business people in Vijayawada City. It is also stated that all of them are Members and guests of the Executive Club, Vijayawada, first petitioner herein; whereas petitioner Nos.50 to 52 are working as Cashiers in the card rooms of the first petitioner-Club.

3. On 13-9-1997 at about 9-30 P.M., the ACP-I and ACP-II along with other officers and mediators, on receipt of credible information, proceeded to the first petitioner-Club and raided the card rooms in the presence of the mediators and found that petitioner Nos.2 to 49 herein were found playing thirteen cards by betting high stakes in the card rooms of the club. It is specifically stated that on

seeing the police, all of them thrown away the cards in the centre of the table in Pel-mel and they were sitting quietly. All of them were arrested in the presence of the mediators and cash and tokens found on the table were seized. It is alleged that the police have also noticed the tokens, which were kept in heap in front of each member and the cards found in pel-mel in the centre of the tables. A panchanama was prepared. The Police have also seized the Cash Registers, which were maintained by petitioner Nos. 50 to 52 in the premises of the first petitioner-Club. It is the case of the police that A-49 to A-51 (Petitioner Nos. 49 to 52) were collecting amounts for the maintenance, from the players.

4. It is stated that during the course of investigation, the Inspector of Police, CCRB, Vijayawada, released A-1 to A-48 (Petitioner Nos. 2 to 49) as they offered sufficient sureties. The statements of the witnesses were recorded. A-49 to 51 (Petitioner Nos. 50 to 52) were also arrested and released on bail.

5. It is the specific case of the police that the Petitioner Nos. 2 to 49 (A-1 to A-48) are liable for punishment u/s 4 of the A.P. Gaming Act, 1974 (for short "the Act") and petitioner Nos. 50 to 52 (A-49 to A-51) are liable for punishment u/s 3 of the Act, as they were running card room, collecting amounts for the maintenance of the card room. Even according to the charge-sheet, petitioner Nos. 2 to 49 were found playing thirteen cards in the card room by betting money.

6. In this application, Sri Vedula Venkata Ramana, learned Counsel for the petitioners contends that the FIR, itself, ex facie discloses that petitioner Nos. 2 to 49 were found playing the game of thirteen cards, which is known as "Rummy" and the said game does not attract Sections 3 and 4 of the Act. It is contended that Rummy is a game of skill and Section 15 of the Act clearly excludes such game from the purview of the provisions of the Act. It is urged by the learned Counsel that even if all the allegations levelled against the petitioners in the complaint and the charge sheet are taken to be true, on their face value, no offence as such could be attributed as against the petitioners. It is further urged by the learned Counsel that there is no other allegation against the petitioners, except that they were playing the game of thirteen cards. According to the learned Counsel, the police have deliberately failed to describe the game as "Rummy", as such description would take away the jurisdiction of the police to register a crime.

7. It is clear from the material available on record that petitioner Nos. 2 to 49 were playing the game of "Rummy" with thirteen cards, though the police did not characterise the game as Rummy. It is not the case of the police that some other game could be played with thirteen cards. The preliminary evidence gathered against the petitioner Nos. 2 to 49 do not make out any case whatsoever against them.

8. The Apex Court in the State of Andhra Pradesh Vs. K. Satyanarayana and Others, , had an occasion to consider the very same question under the Hyderabad Gambling Act (2 of 1305 Fasli), the provisions of which Act are more

or less similar to that of Public Gambling Act, 1867 in force in India. It was also a case where the Members in a particular club were found playing the game of Rummy. The Apex Court observed that "the game of Rummy is not a game entirely of chance like "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 cards has to be memorised 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 cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack.

9. The definition of common gaming house in Hyderabad Gambling Act is more or less the same as in the Act of 1974. Both the Acts, it appears, mainly borrowed the provisions from the Public Gambling Act, 1867, Section 2 of the Act, 1974, defines common gaming house and it means:

(1) in the case of gaming

(a) on a horse-race except in the manner provided in clause (2); or

(b) on the market price of cotton, bullion or other commodity or on the digits of the number used for stating such price; or

(c) on the ground of variation in the market price of any commodity specified in item (b) or on the digits of the number used for stating the amount of variation; or

(d) on the market price of stock or share or on the digits of the number used for stating such price; or

(e) on the number of registration or on the digits of the number of registration of any other motor vehicle using a public place; or

(f) on any transaction or scheme of wagering or betting in which the receipt or distribution of winnings of Prizes, in money or otherwise, is made to depend on chance; any house, room, tent, enclosure, vehicle vessel or any place whatsoever in which the gaming takes place or in which the horses or other instruments of gaming, are kept or used for such gaming;

(ii) in the case of any other form of gaming, any house, room tent, enclosure, vehicle vessel or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel or place, whether by way of charge for the use of such house, room, tent, enclosure, vehicle, vessel or place or instruments of gaming or otherwise howsoever.

Explanation :--For the purposes of sub-clause (ii), any premises or place belonging to or occupied by, a club, society, or other association of persons, whether incorporated or not, which is used or kept for purposes of gaming shall be deemed to be a common gaming house notwithstanding that there is no profit or gain for the club, society or other association of persons on account thereof."

10. The expression "gaming" is defined in sub-section (2) of Section 2 of the Act. "Gaming" means playing a game for winnings or prizes in money or otherwise and includes playing a game of mutka or satta, and lucky board and wagering or betting, except where such wagering or betting takes place upon a horse-race-

(i) on the day on which the horse-race is to be run;

(ii) in an enclosure which the stewards controlling the horse-race (or race meeting) have, with the sanction of the Government set apart for the purpose; and

(iii)(a) with a licensed book maker; or

(b) by means of a tatalisator,

but does not include a lottery.

According to sub-section(4) of Section 2,

"Instruments gaming" includes, cards, dice, gaming tables, or clothes, boards or any other article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming and any winnings or prizes in money or otherwise, distributed or intended to be distributed in respect of any gaming.

11. Section 3 of the Act deals with penalty for opening a common ganiing house; and whereas Section 4 of the Act deals with penalty for being found in a common ganiing house. Section 15 of the Act declares that nothing in the Act shall apply to games of skill only wherever played.

12. Can the first petitioner, Executive Club, Vijayawada, could be said a "common ganiing house" within the meaning of Section 2 of the Act, 1974, merely because it permits playing of thirteen cards (Rummy) within its premises by charging some money to facilitate such playing by the Members. The Apex Court in the case of State of A.P. (supra) observed:

"As regards the extra charge for playing cards we may say that clubs usually make an extra charge for anything they supply to their members because it is with the extra payments that the management of the club is carried on and other amenities are provided. It is commonly known that accounts have to be kept, stocks have to be purchased and maintained for the use of the members and service is given. Money is thus collected and there is expenditure running of each section of the establishment. Just as some fee is charged for the games of billiards, ping-pong, tennis etc., an extra charge for playing cards (Unless it is

extravagant) would not show that the club was making a profit or gain so as to render the club into a common gambling house. Similarly, a late fee is generally charged from members who use the club premises beyond the scheduled time. This is necessary, because the servants of the club who attend on the members have to be paid extra remuneration by way of overtime and expenditure on light and other amenities has to be incurred beyond the club hours. Such a charge is usual in most of the clubs and we can take judicial notice of the fact.

This leaves over for consideration only the sitting fee as it is called. In this connection, the account books of the club have been produced before us and they show that a fee of 50 paise is charged per person playing in the card room. This to our opinion is not such a heavy charge in a Members Club as to be described as an attempt to make a profit or gain for the club. Of course, if it had been proved that 5 points per game were charged, that might have been considered as an illegal charge sufficient to bring the club within the definition. As we have already pointed out, the levy of that charge has not been proved. The other charges which the club made do not establish that this was a common gambling house within the definition."

13. In such view of the matter the mere fact that petitioner Nos. 50 to 52 have collected some amounts for the maintenance of the card room on behalf of the first petitioner-club, itself, would not make the card room located in the first petitioner-club a gaming house.

With Regard to the Allegation of High Stakes

In *K.R.Lakshmanan v. State of Tamilnadu*, 1996 CrLJ 1635, the Apex Court while considering the provisions of the Tamilnadu Gaming Act (3 of 1930) and the Madras City Police Act (3 of 1888), in the matter - whether running of horse races by the club is a game of "chance" or a game of "mere skill" and as to what would amount to "gambling" and after referring to *Chamabaugwala, The State of Bombay Vs. R.M.D. Chamarbaugwala*, , and *State of A.P. case* (supra) held:

"(i) the competitions where success depends on substantial degree of skill are not "gambling" and (ii) despite there being an element of chance if a game is preponderantly 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".

14. It may be noticed that the provisions of the Hyderabad Gambling Act (2 of 1905 F), A.P.Gaming Act (27 of 1974) and Tamilnadu Gaming Act (3 of 1930) are similar in dealing with the definition of "gaming", "gaming house" and "instruments of gaming". The Apex Court in *Laxmanan's case* (supra) held that the expression "gaming" has to be interpreted in the light of the law laid down by the Supreme Court in *Chamarbaugwala's case* (supra) and laid down the law in clear terms holding that "a competition which substantially depends on skill is not gambling. Gaming is the act or practice of gambling on a game of chance. It is staking on chance where chance is the controlling factor. It would not include

games of skill.'''

15. It is thus obvious that the game of Rummy is not a game of mere chance; but a game which is preponderantly a game of skill. It may include an element of chance and it would nevertheless be a game of "mere skill" within the meaning of Section 15 of A.P.Gaming Act, 1974. Thus, the applicability of Sections 3 and 4 of A.P.Gaming Act, 1974, is excluded insofar as it relates to the game of Rummy. Once it has to be held that the provisions of the Act are not applicable, whatever may be the stakes involved in playing such game would not be of any consequence.

16. Thus, it is clear that the card room or rooms within the precincts of the first petitioner-Executive Club, Vijayawada, cannot be said to be "gaming house" as long as the game of thirteen cards (Rummy) is played by the members or the guests or both, as the case may be. The cards used for playing the game of thirteen cards (Rummy) cannot be said to be "instruments of gaming". Therefore, even if the petitioner Nos. 2 to 49 were found playing thirteen cards (Rummy) in the premises of the first petitioner-club, they cannot be made liable for punishment u/s 4 of the Act. Likewise, no person connected with the affairs of the management of the first petitioner-club can be punished u/s 3 of the same Act.

17. No other question arises for consideration.

18. For all the aforesaid reasons, the proceedings in Cr.No.406/97 of P.S., Machavaram, Vijayawada City (in the Court of the III Metropolitan Magistrate, Vijayawada) cannot be allowed to go on, as against petitioner Nos. 2 to 52 in any manner whatsoever. Any further proceedings would mean nothing but abuse of legal process.

19. In such view of the matter, the petition is allowed and the proceedings in Cr.No.406/97 on the file of P.S., Machavaram, Vijayawada City (in the Court of the III Metropolitan Magistrate, Vijayawada) are accordingly quashed.

20. Accordingly, there shall be a direction to the respondent to return the seized amounts to the first petitioner herein in connection with the above crime.

21. Ordered accordingly.