

(1982) 03 KAR CK 0037

In the Karnataka High Court

Case No : Criminal Petition No. 81 of 1982

G.S. Ananthaswamy Iyer and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-03-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Karnataka Police Act, 1963 — Section 79, 80

Citation : (1982) CriLJ 2121

Hon'ble Judges : M.S. Patil, J

Bench : Single Bench

Advocate : C.V. Nagesh, for the Appellant; K.H.N. Kuranga, Govt. Pleader, for the Respondent

Judgement

1. This is a petition filed under S. 482 Criminal P.C. with a request to call for the records in C.C. 46364 of 1981 on the file of the Metropolitan Magistrate, Traffic Court-II, Bangalore City and to set aside the order of issue of process dated 21-10-1981 passed by the learned Magistrate and to quash the criminal proceedings instituted against the petitioner.

2. The case has been instituted against the petitioners on the report made by the police, alleging commission of offences punishable under sections 79 and 80 of the Karnataka Police Act. The facts of the case as could be seen from the first information and the charge report submitted after investigation are; on receipt of a credible information to the effect that some persons were playing game of chance at Balaji Recreation Association situated at No. 47, 1st Cross, B. V. K. Iyengar Road, Bangalore City, when the Sub-Inspector of Chickpet Police Station obtained necessary search warrant and went to the spot at about 8 p.m. he found the petitioners-accused present there were playing a game of chance called "Rummy" with playing cards using jokers with stake money and on further personal search of the petitioners present there he also found money in their possession of different denominations and that petitioner 26 who is said to be

the President of the Association had allowed the premises for gambling by collecting commission from the gamblers.

3. The contention of the petitioners is that the game the Rummy was not a game of chance but a game of skill, and therefore the proceedings instituted against them, deserve to be quashed.

4. The contention is well founded. The facts of the case are almost on all fours with the facts in State of Andhra Pradesh Vs. K. Satyanarayana and Others, . Dealing with a similar case, their Lordships of the Supreme Court observed (Pr. 12) :

"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 other hand, requires certain amount of skill because the fall of the cards has to be memorized and the building up of Rummy require considerable skill in holding and discarding cards. We can not, 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 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."

In this view, their Lordships of the Supreme Court held that the High Court was not right in accepting the reference and dismissed the appeal filed by the State.

5. The above decision applies to the facts of the present case and the court below was therefore not right in directing the issue of process. The criminal proceedings instituted against the petitioner are clearly an abuse of process of court and are therefore liable to be quashed.

6. Sri Kuranga, learned High Court, Government Pleader, however, relying upon the observation made by the Supreme Court towards end in para 12 of the judgment to the effect that "if there is evidence of gambling in some other say or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home", submitted that what is stated in the charge report that accused-26 being the President of the Association had allowed the premises for gambling be collecting commission from the gamblers showed that there was material available to show that the house was being used for gambling and therefore the proceedings instituted against the accused cannot be quashed. I am unable to accept this contention. In the first instance gambling involves playing a game of chance. Though according to the Sub-Inspector the information that he had before raiding the place was that the persons were playing such a game of chance, but what he found actually on going to the place was that the persons

were playing game of Rummy with cards and not any game of chance. Therefore, it cannot be said the place was being used for any such purpose of gambling, or it was used as such as a gambling house. Even assuming accused-26 was collecting certain commission from the persons who were playing the game of Rummy in the premises of the Association, that collection by itself cannot make it either a gaming house or the accused can be said to have committed any such offence punishable under sections 79 and 80 of the Police Act. The allegation made by the Investigating Officer was that the accused were merely playing a game called Rummy by using the cards, but not any game of chance. As pointed out by the Supreme Court in the decision referred to above, it is commonly known that stacks have to be purchased and maintained for the use of the members and service is given, money is thus collected. Just as some fee is charged for the games of billiards, pingpong, 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. The collection of some fees may become necessary to maintain the Association running. Therefore, if accused-26 was collecting some commission for allowing them to have the game the Rummy being played there, it cannot be said any such offence at all is made out.

7. In the result, for the reasons stated above, this revision petition is allowed. The process issued against the accused-petitioner are set aside and the proceedings instituted against them are quashed.

8. Petition allowed.