
(2005) 07 AP CK 0021

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 4447 of 2004

Kurella Krishna Prasad and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Andhra Pradesh Gaming Act, 1974 — Section 3, 4, 5
Criminal Procedure Code, 1973 (CrPC) — Section 100, 100(4), 103, 4

Citation : (2005) 2 ALD(Cri) 203 : (2005) 3 ALT(Cri) 63 : (2005) 3 APLJ 92 :
(2005) CriLJ 4431

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

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Inspector of Police, Puttur Circle, laid a charge sheet against the petitioners under Sections 3 and 4 of A.P. Gaming Act, 1974 (for short - "the Act"), for their gambling in a premise where Puttur Recreation & Cultural Association is housed. This petition is filed to quash the said charge sheet.

2. The contention of the learned counsel for petitioners is that petitioners are members of Puttur Recreation & Cultural Association, registered under the Societies Registration Act, with an object of promoting sports and games among youth and middle aged people etc., and when police started interfering with their lawful activities, they filed W.P.No.16292 of 2003 seeking a direction restraining the police from interfering with their lawful activities in the Club and had also filed O.S.No.116 of 2004 seeking an injunction restraining the police from interfering with the lawful activities in the club and so police, feeling aggrieved by their filing a writ petition and suit had, with a view to harass and humiliate the petitioners falsely implicated them in this case. It is his contention that inasmuch as the procedure contemplated by Section 100(4) Cr.P.C. admittedly is not followed by the police while conducting the search and seizure, proceedings

impugned are liable to be quashed because in the counter affidavit in W.P.No.14620 of 2004 it is clearly admitted that only police officials (but no independent witnesses) were present at the time of search. He placed strong reliance on the observations in State, Government of NCT of Delhi v. Sunil 2001 (1) SCC 652 in support of his contention that the procedure laid down in Section 100 Cr.P.C. is mandatory.

3. The contention of the learned Public Prosecutor is that since mala fides have no relevance in quash proceedings and since the procedure prescribed by the Act is strictly followed and since the contentions raised by the petitioners have to be decided only at the time of trial, question of quashing the charge sheet does not arise.

4. The point for consideration is whether police, while making search under the provisions of the Act, need follow Section 100 Cr.P.C.?

5. Petitioners are charge sheeted only under Sections 3 and 4 of the Act alleging that they were found gambling with stakes by playing "Lopala - Baita" in the premises, which was raided by the Inspector of Police and others after obtaining a search warrant from the Sub-Divisional Police Officer, Chittoor. Section 5 of the Act reads- "(1) If any salaried judicial or executive Magistrate, or any police officer not below the rank of an Assistant Commissioner of Police within the areas under jurisdiction of the Commissioner of Police Hyderabad and a Deputy Superintendent of Police elsewhere has reason to believe that any place is used as a common gaming house, he may by his warrant give authority to any police officer not below the rank of Sub-Inspector, -

(i) to enter with such assistance as may be found necessary, at any time and by force, if necessary, any such place;

(ii) to arrest all persons found therein;

(iii) to search all such persons and all parts of such places; and

(iv) to seize-

(a) all moneys found with such persons;

(b) all instruments of gaming; and

(c) all moneys, all securities for money and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming which are found in such place."

Since the allegations in the charge sheet show that the Sub-Divisional Police Officer (Deputy Superintendent of Police), Chittoor, had authorized the Inspector of Police, Puttur, to search the premises bearing No. 28-117, near toll gate, Puttur, it, prima facie, is clear that the search was made in accordance with the procedure prescribed by Section 5 of the Act.

6. I am unable to agree with the contention of the learned counsel for petitioners

that police need follow the procedure prescribed by Section 100 Cr.P.C. while making a search as per the provisions of the Act, because Section 4 of the Cr.P.C. reads-

"(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried; and otherwise dealt with according to the provisions hereinafter contained.

(2) All the offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

and since there is nothing in the Act to show that the procedure prescribed in the Cr.P.C. has to be followed, while making a search under the Act. The same view was taken by the Allahabad High Court in *Rure Mal v. Emperor*, AIR 1929 Allahabad 937 where it is held that if a warrant for search u/s 5 of U.P. Public Gambling Act is issued, Section 103 of Cr.P.C., 1898, has no application. Lahore High Court in *Khilinda Ram v. Emperor*, AIR 1922 Lahore 458 and Bombay High Court in *Raghunath v. Emperor*, AIR 1932 Bombay 610 also took a similar view. Even otherwise also, question whether a search made without following the procedure u/s 100 Cr.P.C. is valid or not depends on the circumstances of each case *Kehar Singh and Others Vs. State (Delhi Administration)*, . So, merely on the ground that police did not follow the procedure prescribed by Section 100 Cr.P.C. while making a search under the Act, prosecution under the Act cannot be quashed because the reasons for not taking independent witnesses can be explained and it is for the trial Court to believe or not to believe such explanation, even if Section 100 Cr.P.C. applies. In fact, while upholding the validity of Section 5 of the Act, a Division Bench of this Court in *Janata Recreation Centre, Gullapalli Vs. State of Andhra Pradesh and Others*, held as follows:-

"We shall now deal with Section 5 whose constitutionality is very much attacked. This section provides power to a salaried judicial or executive magistrate or any police officer not below the rank of Assistant Commissioner of Police within the area under the jurisdiction of the Commissioner of Police of Hyderabad, and a Deputy Superintendent of Police elsewhere to issue a warrant to any police officer not below the rank of Sub-Inspector to enter a common gaming house or arrest persons therein, to search them and seize the instruments of gaming and all other articles found therein. The submission of Sri Ramachandra Rao is that the power to enter, arrest, seize etc. is entrusted to a police officer on his having reason to believe that any place is used as a common gaming house. The expression "has reason to believe", is not in any way arbitrary under which where the concerned authority has reason to believe on the material available to him that any place is used as a common gaming house, he could issue the warrant to any police officer not below the rank of Sub-Inspector. The very fact that the authorities indicated therein are very responsible officers and the

persons to whom the warrant is issued being a police officer not below the rank of a Sub-Inspector shows that the Legislature thought that the interests of the citizens would be safe in the hands of such responsible officers who are expected to discharge the duties properly, fairly and justly. Such power is not only not arbitrary but is really necessary to implement the provisions of the Act strictly and effectively. But for this power, the police officer would not be able to enter the premises of a club or any common gaming house and take proper and necessary action to prevent this evil, charge the persons who are responsible for the offence committed under the Act. The subjective satisfaction of the concerned authority under this Act to whom the power is given to issue a warrant need not be suspected to be abused. Even if any individual officer or authority has exceeded his limits of power or jurisdiction vested in him under the Act, he may be proceeded against by the aggrieved party or persons by not complaining against him to his higher authorities, but by filing criminal complaints, resorting to the aid of common law. In this context we may also add that the petitioners' contention that the police officers should not be allowed to enter their premises of the clubs as they are becoming a menace to them and they are creating harassment and trouble and infringing their fundamental rights of privacy, cannot be acceded to. The police officers are entrusted with the onerous duty to maintain law and order. The Court also cannot issue an injunction or direction to the police officers not to discharge their duties in this regard. That apart, the police officers or other authorities would be prevented from discharging their duties in the interest of public if any prevention is ordered by judicial interference. We do not, therefore, find any illegality in Section 5."

7. For the above reasons, I find no merits in the petition and hence, the petition is dismissed.