
(1966) 02 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 440 to 447, 461 and 462 of 1964

Public Prosecutor (Andhra Pradesh)

APPELLANT

Vs

Mulupuri Satyanarayana and Others

RESPONDENT

Date of Decision : 10-02-1966

Acts Referred:

Andhra Pradesh (Andhra Area) Gaming Act, 1930 — Section 5, 6

Citation : AIR 1967 AP 133

Hon'ble Judges : Gopalrao Ekbote, J

Bench : Single Bench

Advocate : K. Somakonda Reddy, for the Appellant; K. Ramachandra Rao, A. Venkata Rao and Rami Reddi, for the Respondent

Judgement

(1) These are appeals against the order of acquittal passed by the Additional Judl. 2nd Class Magistrate, Eluru, On 20-2-1964 and raise the following circumstances.

(2) Ten accused were charged for being found holding a gambling den in Jolly Club situated in front of Eluru Bus Stand. On the night of 23-8-1963 at about 9 p.m. C. W. I, the Deputy Superintendent of Police, Eluru, raided the Club and found accused 1 to 8 playing cards with stakes. On sighting the Police Officer these players threw the cards and stood up. The Deputy Superintendent of Police thereupon seized the playing cards and some tokens and also money amounting to Rs. 25-07. A-9 and A-10 are the Secretary and the President respectively. The defence raised by the accused was that they are not guilty of the charges levelled against them u/s 8 and 9 of the Andhra Pradesh (Andhra Area) Gaming Act, 3 of 1930 (hereinafter called the Act). After recording the evidence adduced by the prosecution and examining the Deputy Superintendent of Police as a Court witness the learned Magistrate acquitted all the accused of the said charge holding that the search made by the Deputy Superintendent of Police was made on improper grounds and that it was an invalid search and that no presumption u/s 6 therefore arose in the case. He consequently found that the Jolly Club does

not maintain of the Act and that the accused therefore cannot be convicted.

(3) The principal contention of the learned Public Prosecutor is that whether the Deputy Superintendent of Police had sufficient or proper reasons to believe that the Jolly Club is being used as a common gaming house cannot be enquired into by the Court below. There was however, enough material on the basis of which the Deputy Superintendent of Police could reasonably come to the conclusion that he had reasonable grounds to believe that the said Club is being used as a common gaming house and that the raid therefore was perfectly valid u/s 5 of the Act and consequently presumption u/s 6 of the Act ought to arise in this case. He further argued that coupled with this presumption if the evidence adduced by the prosecution is taken into account, it can safely be found that A-9 and A-10 who are the Secretary and the President respectively of the Club, are running the Club as a common gaming house and that A-1 to A-8 were found playing cards on stakes on the day when the raid took cards on stakes on the day when the raid took place. In order to appreciate this contention it is necessary to read Section 5 and 6 of the Act.

4. (1) If any salaried Magistrate not inferior to a Magistrate of the second class or any Police Officer not below the rank of a Deputy Superintendent?Nhas reason to believe that any place is use as a common gaming-house, he may by his warrant give authority to house, he may by his warrant give authority to any Police Officer, not below the rank of a Sub-Inspector, to enter with such assistance as may be found necessary, by night or by day, any such place, and to arrest all persons found therein and to seize all instruments of gaming and all moneys and securities for money and articles of value reasonably suspected to have been used or value reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein, and to search all parts of such place and also the persons found therein.

(2) Any Police Officer having power to issue a warrant under sub-section (1) may, instead of doing so, himself exercise all or any of the powers exercisable under such warrant.

(5) Any cards, dice, gaming table or cloth, board or other instruments of gaming found in any place entered or searched under the provisions of the last preceding section, or on an person found therein shall be evidence that such place is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Police Officer or any of his assistants."

(6) A close and analytical reading of the said two Section would reveal that if any salaried Magistrate not inferior to a Magistrate of the second class or any Police Officer not below the rank of a Deputy Superintendent of Police has reason to believe that any place is used as a common gaming house, he may by issuing a warrant authorise any Police Officer not below the rank of a Sub-Inspector to search and seize the articles mentioned therein. It is also clear from sub-section

(2) of section 5 that any Police Officer having power to issue a warrant under sub-section (1) i.e., any Police Officer not below the rank of a Deputy Superintendent of Police instead of issuing the warrant under sub-section (1) can himself exercise the powers which are exercised in pursuance of the warrant referred to in sub-section (1) of Section 5.

(7) Section 6 raises a presumption that if after the search visualised u/s 5 is made, any cards dice, gaming table or cloth board or other instruments of gaming are found in the place searched, such a place is used as a common gaming house and that the persons found therein were present there for the purpose of gaming.

(8) The trial Court in spite of these two clear sections went into the question whether the Dy. Superintendent of Police had adequate reliable information and was it proper information on the basis of which he could go himself and conduct the search and seize the articles. Commenting upon the evidence of P. W. 2 and particularly the evidence of C. W. 1, the Deputy Superintendent of Police he found that the information which C. W. 1 had was old and state and that he had not verified the information which he had received, and reached the conclusion that the Deputy Superintendent of Police had no adequate material to say that he had reasons to believe that the Club is being used as a common gaming house. What is therefore required to see is whether it is open to the Court to go into the material or the information on the basis of which the Deputy Superintendent of Police was satisfied that he had reason to believe that the Club is used as a common gaming house. The phrase 'has reason to believe' has been considered in innumerable cases not only in regard to Section 5 of the Act but in regard to Section 42 of the Madras Police Act, which Section is almost similar to Section 5 of the Act. This expression was also considered in regard to several other provisions of other Acts both by civil and criminal Courts. the consensus of opinion seems to be that the said phrase indicates a subjective satisfaction of the Officer; he need not divulge or put forth before the Court either the source from where he got the material or information or what was the material or information on which he reached the conclusion that there is reason to believe that any place is used as a common gaming house. That being his subjective satisfaction it is not open to the Court to substitute its own satisfaction to that of the Officer concerned. Whether the material or the information available to the concerned Officer was proper or not, or it was adequate or not to act u/s 5 of the Act is again for the consideration of the Officer concerned and not for the Court. When Section 5 entrusts that function to the Deputy Superintendent of Police it is for him to realise the consequences of the serious step he was taking in conducting the search. But it is he who has to make up his mind on the material placed before him and not for this court to examine the material which was available to the Deputy Superintendent of Police in order to see whether the material was proper or sufficient or contemporaneous with the raid, or was old. Enquiry into these things not being open to the Court it is obvious that it has to be presumed that there was material or information with

the Deputy Superintendent of Police on the basis of which he was satisfied that the Club is used as a common gaming house, except of course it if is shown that the Deputy Superintendent of Police acted mala fide. In the absence of any such plea, that being a subjective satisfaction of the Deputy Superintendent of Police he has to be satisfied that he has reason to believe that the Club is used as a common gaming house. That this is the correct position of law is supported by a decision of the Supreme Court in *Ashutosh Lahiry Vs. The State of Delhi and Another*, . Their Lordships decided:

"The satisfaction of the authority making the order as to the matters specified in the Act is the only condition for the exercise of his powers and the Court cannot substitute its own satisfaction for that of the authority. It is, however, open to the detenu to establish, if he can, that the order was made mala fide and in abuse of powers and the order of investigatiay be declared invalid if it could be proved to have been made by the authorities concerned in mala fide exercise of their power. The burden of proving the absence of good faith is upon the detenu and it is certainly a heave burden of discharge. Mere suspicion is, however, not proof." To the similar effect is the oft-quoted decision of the House of Lords in *Liversidge v. Sir John Anderson*, 1942 A.C. 206.

(9) This conclusion finds sufficient support from the following decisions decided under the Act. In *K.T.K.A. Alagappa Chettiar and Others Vs. Emperor*, the contention raised was that the onus of proving that the cards etc., were used for the purpose of gaming rests upon the prosecution and that it was not proved in that case. Walsh, J., on consideration of Sections 6 and 11 of the Act observed that the omission of the words "until the contrary be proved" in Section 6 meant in any way that the prosecution was bound to put in further evidence than the articles themselves. The learned Judge observed:

"At the best the omission of these words can only mean that in spite of there being no evidence to the contrary the Court need not accept them as conclusive evidence but it cannot mean that the prosecution cannot succeed without calling other evidence."

The learned Judge went on:

"It seems to me that the section is capable of only one reading and that is that the mere finding of articles mentioned therein raises a presumption on which the Court can act."

(10) In *Re: K.M.T.T. Kulandaivelu Chettiar and Others*, , Horwill, J., said:-

"Section 6 clearly makes the finding of cards of instruments of gaming not were found; but that the building in which they were found was a "common gaming house," provided that these articles were found there in a search conducted upon a warrant issued under Sec. 5. That means that although there may not be any independent proof that any person makes a profit from this gambling or from the use of the room for gambling, yet the mere finding of cards and instruments of

gambling in a house se(1920) AIR 1ch a warrant, is evidence that the room was used for gambling and that some person was deriving a profit from it."

The learned Judge went on to observe-

"Even though there is no such presumption of guilt there is nothing in the Act which prevents a Magistrate convicting upon that evidence alone. I do not propose to decide the abstract question whether such evidence alone would be sufficient or not to sustain a conviction; for, in almost every case, there must be some other evidence lessening the effect of the evidence operated on by Sec. 6 or increasing it." The learned Judge repelling the contention that the warrant issued u/s 5 must be shown to have been issued upon proper information sufficient to lead to a Magistrate to believe that the place was used as a common gaming place. The learned Judge stated that in such a case presumption u/s 114, Illustration (e), Evidence Act, can be drawn that the warrant was properly issued and observed:-

"It would be against public policy in most cases in the prosecution were compelled to let in evidence in regard to the material on which a Magistrate acted. If the nature and the source of such information were not concealed, the police might be unable in future to obtain information at all."

Mr. K. Ramachandra Rao, the learned Counsel for the accused, relied upon another decision reported in the same volume at p. 29 In Re: Annum Kesanna Chetty and Others, and contended that mere presumption u/s 6 is not enough to convict the accused and the reasons which induced the Deputy Superintendent of Police to raid the premises must be put before the Court and the Court must test the same. It is no doubt true that the said decision does decide so, but with due respect I do not think that that continues to be correct law as is obvious from the decision of the Supreme Court and the other cases to which I have made and would make reference. That was the view taken by Newsam, J., in the abovesaid Madras Case. Chandrasekhara Aiyar, J., also took the view in In re, ion 18 (1) ogar, In Re: Thambi Iyengar and Others, , that where the warrant issued u/s 5 does not set out that the Officer was issued it had reason to believe that the house in question was being used as a common gaming house and all it states is that information had been laid before him that gambling was going on in a certain house, the presumption u/s 6 does not arise. This view does not seem to have been accepted as correct in other decisions of the same Court and obviously goes contrary to the decision of the Supreme Court referred to above. The other decision reported in the same volume at page 465 is relevant. Kuppuswami Aiyar, J., held in In Re: A. Perayya, :

"Therefore, when a warrant is issued u/s 5, the Magistrate must be taken to have satisfied himself on the information supplied to him that issuing of warrant was necessary and hence a warrant cannot be said to be invalid merely because the information on which he was asked to issue it is not stated therein.

If a warrant is validly issued under S. 5, the presumption naturally follows under

Sec. 6, Gaming Act, that the place was used as a common gaming house and that the persons found therein were present there for the purpose of gaming."

(11) Another Judgment at page 112 of the same volume does not in my opinion, throw any light on the question under consideration.

(12) Another decision which requires consideration is In Re: Venkoba Rao and Others, That was a case under the Madras City Police Act and their Lordships were concerned with Sections 42 and 43 of the said Act. Their Lordships said:

"A warrant issued u/s 42 of the Madras City Police Act or section 5 of the Madras Gaming Act is not invalid simply for the reason that it is not stated therein that the authority which was issued the warrant has reason to believe that the place in question is issued as a common gaming house."

This conclusion was reached after considering various decisions of the Madras High Court. Their Lordships with the view expressed by Horwill, J., in In Re: K.M.T.T. Kulandaivelu Chettiar and Others, and also with the view expressed by Kuppuswami Aiyar, J., in Emperor Vs. Syed Kasim, In spite of this finding their Lordships seem to have thought that if it is not stated in the warrant that the Magistrate had reason to believe that the place was used as a common gaming house the presumption u/s 6 should not necessarily be drawn, if a warrant was challenged on the ground that the Magistrate had no reason to believe that place was used as a common gaming house. Their Lordships observed:

"If the Magistrate has not chosen to state that he has "reason to believe" then the presumption need not be drawn unless evidence is adduced that in fact, the warrant was issued on proper information."

With due respect I must point out that in a way this observation goes contrary to what was decided by their Lordships earlier. In any case Section 6 does not leave to the Courts to draw or refuse to draw presumption u/s 6. The language of Section 6 is peremptory and does not admit of any such interpretation; it emphatically says that if the in pursuance of the search warrant or search made u/s 5 things mentioned therein are found, those things shall be evidence of the fact that the place is run as a common gaming house or that the persons found playing were present for the purpose of gaming. That is made abundantly clear in the decisions referred to in this judgment. It is true that their Lordships further have observed:

"All that is necessary, if the Magistrate has not stated himself that he had reason to believe that the place was used as a common gaming house, is for the Court to be satisfied, in the words used by King, J., that the Magistrate was aware of the serious nature of the step he was taking and that he had reason to believe that the information which was given to him was true."

This observation again seems to be inconsistent with the incorrect view of the Supreme Court as mentioned above.

(13) In Re: Nimmagadda Raghavalu and Others, , Ramaswami, J., observed:

"There is no prescribed form for warrant under S. 5 and S. 5 does not require the Magistrate to record anywhere his reasons for believing any information the policy may have given him nor even the fact that he had reason to believe that any place used as a common gaming house, and all that it requires is that the Magistrate shall have reason to believe that if he has, he can issue his warrant not in any particular form but his warrant giving authority to the police officer to do certain things."

(14) Relying upon a decision in K. Dhanarao, 1954 2 Mad LJ 618, Mr. K. Ramachandra Rao, the learned Counsel for the accused, contended that the practice prevailing in the High Court of Madras was not to punish the accused merely on the presumption u/s 6. It is no doubt true that Somasundaram, J., makes a reference to such a practice and observes that unless there is something more in addition to the presumption, it has been the practice of that Court not to punish the accused under the Act. It is difficult to lay down as a broad principle that in no case merely on the presumption arising u/s 6 the accused cannot be punished. It may be that in some cases in view of the peculiar facts and circumstances of that case it would not be safe to convict the accused merely on the ground of presumption which Section 6 raises. But that is different than saying that the practice or policy informally to be allowed is not to convict the accused merely on the ground of presumption. If there are enough grounds to convince the accused, the Act does not prohibit conviction on the basis of such presumption. It would be in my opinion perfectly valid if conviction is based on the presumption which law allows to make. That this is so is abundantly clear from the various decisions considered by me in this judgment.

(15) The other case to which my attention was drawn in N.K.P. Thirupathi Chettiar, In re, (1 of compensa 540). What it lays down is that before making a raid the Deputy Superintendent of Police should be satisfied that the place is used as a common gaming house. That decision does not say anything more than what Section 5 itself says. If the Deputy Superintendent of Police has reason to believe that any place is used as a common gaming house, he can certainly himself raid the premises instead of issuing a warrant. That decision also supports the view that the instruments of gaming seized during such a raid would be evidence u/s 6 of the Act.

(16) That the view which I have expressed is correct is supported by a recent decision of the Madras High Court. In Palanisamy, In re, 1964 1 Mad LJ 404 M. Anantanarayanan, J., held:

"Where a warrant issued by a competent authority states that "on due enquiry" he has been "led to believe" that the house was used as a common gaming house, it is adequate compliance with the requirements of section 5 of the Madras Gaming Act. No further evidence that the warrant was issued on proper information is necessary."

(17) On a consideration of Sections 5 and 6 of the Act and the decisions referred to above I find no difficulty in holding that it is not open to the Court to substitute its satisfaction to that of the Deputy Superintendent of Police. It is his subjective satisfaction and the Court cannot enquire into as to what material or information he had before he conducted that search, nor is it permissible to make an enquiry in regard to the sufficiency or otherwise of the information on the basis of which he conducted the search. What the Deputy Superintendent of Police has to do is to ascertain certain facts which satisfy him or entitle him to form an opinion that there is reasonable cause to believe that a place is run as a common gaming house. In the process of satisfying himself he can obtain information in any way he thinks fit. Whether he is so satisfied or not is a matter purely left to him. Assuming always of course that he acts bona fide he is the best judge of the material which persuaded him to form an opinion that a place is run as a common gaming house. The section leaves peculiarly that decision to the Deputy Superintendent of Police. No objective test in that regard is either permissible or possible. In making his decision he may obviously test in that regard is either permissible or possible. In making his decision he may obviously be guided by his own views as to whether there is enough material to reach the conclusion to which he has reached. He cannot be confined to a particular course or form of enquiry or any standard of proof or evidence. He may have and is entitled to have present in his mind his own views as well as the material which reached him. In this view of the matter the conclusion of the learned Magistrate becomes bad in law.

(18) Even otherwise I am satisfied that there was abundant material before the Deputy Superintendent of Police which could easily lead any reasonable man to believe that the Jolly Club is used as a common gaming house. It is relevant in this connection to note the evidence of P.W. 1. He makes a reference to earlier cases, C. Cs. 612 to 1963 wherein the accused in that case were convicted and sentenced to pay a fine. He also referred in the evidence given by A-10 in C.C. No. 42 of 1962 on the file of the J.A.D.M.M., Tanuku as P.W.7, wherein he had made a confession that he was getting profits out of the Club in question. He also says that a regular watch was kept on this Club and its information was given to C.W.1. C.W.1 no doubt in his evidence says that he did not verify the information and that he had no documentary evidence or record to show that he got that information. That is however not to say that C.W. 1 did not have the information passed on to him by P.W. 1. That material in my view was enough for the Deputy Superintendent of Police to conduct a raid as he did u/s 5 of the Act. It would be plain from what is stated above that as the search warrant was issued and as the raid is not attacked on grounds of mala fide, what must follow is that the articles found in search are clear evidence that the Club is used as a common gaming house, and according to the definition of that term the presumption will follow that the Club was making profit out of it. It must also have to be presumed that the persons found playing cards there viz., A-1 to A-8, were present there for the purpose of gaming.

(19) The only question left for consideration is whether this is a fit case in which on the basis of the presumption u/s 6, I should convict A-9 and A-10 u/s 8 and A-1 to A-8 u/s 9 of the Act. Apart from this presumption it is clear from the evidence of P.Ws.1 AND 2 that at the time when the raid was conducted A-1 to A-8 threw the cards and got up with a view to conceal the fact that they are playing with stakes. Tokens and money also were found with them. In view of this evidence coupled with the presumption I think the irresistible conclusion is that the accused Nos. 9 and 10 being the Secretary and the President of the Club are guilty for the offence u/s 8 of the Act for using the Club as a common gaming house and A-1 to A-8 are guilty of the offence u/s 9 of the Act. I would therefore for the reasons stated above allow these appeals, set aside the judgment of the trial Court and sentence the accused to pay a fine of Rs.15 each under the Sections mentioned above, or undergo simple imprisonment for one week failing to pay the fine. The money seized will be forfeited u/s 10 of the Act.

(20) Appeals allowed.