
(1972) 03 AP CK 0013
In the Andhra Pradesh High Court

The Public Prosecutor

APPELLANT

Vs

V. Viswanathachari

RESPONDENT

Date of Decision : 09-03-1972

Acts Referred:

Andhra Pradesh (Andhra Area) Gaming Act, 1930 — Section 5, 6, 7, 8

Citation : (1972) 2 AnWR 235 : (1973) CriLJ 779

Hon'ble Judges : Madhava Reddi, J

Bench : Single Bench

Judgement

Madhava Reddi, J.—This appeal by the State is against the acquittal of the sole accused who was charged with having committed an offence punishable u/s 8 of the Andhra Pradesh (Andhra Area) Gaming Act of 1930) hereinafter referred to as the Act. It is the case of the prosecution that the respondent is the proprietor of Welcome Hotel in Kurnool. When it was raided on 25th March, 1970 at about 10 A.M. in room No. 4 of that hotel one B. Venkata Rami Reddy and 3 others were found playing a game called "Mangapatha" which is a game of chance, by betting money and that a sum of Rs. 200/- was collected as pool money by the players for the benefit of the accused. On an appreciation of evidence and record the learned Magistrate came to the conclusion that it was not proved that that amount was set apart for the benefit of the accused respondent. He further found that in fact there was a raid in room No. 4, that M.O. 1 playing cards, a sum of Rs. 8,020 M.O. 3. four chairs M.Os. 4, 5, 6 and 7 and a Zip bag M.O. 2, and two beds and bed sheets were recovered. On these findings the learned Magistrate held that the accused was not guilty of the offence and acquitted him.

2. It is argued by the learned Public Prosecutor that when the premises in question of which the respondent is admittedly the proprietor was raided to pursuance of a warrant issued u/s 5 of the Act and when playing cards and a huge sum of Rs. 8,020 were recovered, that is sufficient to hold that the respondent was guilty of the offence punishable u/s 8 of the Act. According to

the learned Public Prosecutor in view of Section 6 when cards and other instruments of game were found in any place entered or searched in pursuance of a warrant issued u/s 5 that constitutes sufficient evidence that such place is used as a common gaming house. He also argues that in view of Section 7 it is not necessary to further prove that any person found playing a game was playing for money and therefore, the respondent who is the proprietor of the premises must be held to have kept or at least permitted to use the hotel as a common gaming house and that therefore has to be found guilty of the offence u/s 8 of the Act.

3. In order to appreciate this contention, it is necessary to read Section 8 which is as follows:

8. Whoever opens, keeps or uses or permits to be used any common gaming house or conducts or assists in conducting the business of any common gaming house or advances or furnishes money for gaming therein, shall be liable on conviction to fine not exceeding five hundred rupees, or to imprisonment not exceeding two months; or to both.

It is clear that the two ingredients of an offence u/s 8 are: (1) That the premises should be a common gaming house and (2) that the person must have either kept or used or permitted to use any common gaming house or conducted or assisted in conducting the business of any gaming house or should have advanced or furnished money for gaming therein. If the premises which is raided is a common gaming house, but the person has not opened it or kept it or used it or permitted it to be used or has not conducted or assisted in conducting the business, then he cannot be held guilty of the offence. Both the ingredients must be satisfied before he can be held guilty of the offence u/s 8 of the Act. Turning to Section 6 which reads as follows:

6. 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 any 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. It would be seen that if cards or other instruments of gaming are found in any place entered or searched u/s 5 they would be merely evidence of the place being used as a common gaming house and not that any person has either opened or has kept or has used or permitted to be used or has conducted or assisted in conducting the business of any common gaming house. The recovery of the materials mentioned in Section 6 is not evidence of the second ingredient of the offence. So far as Section 7 is concerned all that it lays down is that for purpose of convicting any person for keeping a common gaming house or of being concerned in the management of any common gaming house it shall not be necessary to prove that any person found playing a game was playing for money, wager or bet. In other words while it may be necessary to establish that a person was keeping a gaming house or of

being concerned in the management of any gaming house, it is not necessary that the persons playing any game should actually be found playing for any money. It is enough if they were gaming within the meaning of the Act; but Section 7 does not dispense with the proof of the fact that the premises where the persons were found playing was a common gaming house or proof of the fact that a person had kept a common gaming house or was concerned with the management of the common gaming house. It only dispenses with the necessity of proving that the persons playing the game were doing so for money. Section 7 cannot be invoked to hold a person guilty even when the proof of the existence of a common gaming house and the participation of the accused either in opening, keeping, using or permitting it to be used or conducting, or assisting in conducting the business of a common gaming house is not established.

4. A similar view was taken in. In re Thatri Reddy AIR 1949 Mad 475 : 50 Cri LJ 672. It was held therein that where cards and money are found with the accused Section 6 would justify the application of the presumption that the accused were gaming in a common gaming house and a conviction u/s 9 would be justified. Rajagopalan J. observed:

The presumption permitted by Section 6 can however be drawn only to establish that the house in Question was a common gaming house. It cannot be extended further to establish without further evidence that a specified person was the owner or the keeper of that common gaming house and in the absence of evidence to prove that the accused did derive any profit from the examine he cannot be convicted u/s 8.

5. In the instant case the premises that were raided was a room in a hotel with lodging facilities which was let out to a different person. There is no proof that the accused had opened or kept or used or permitted to use that room as a common gaming house or that he (accused) had in any way conducted or assisted in conducting the business of any common gaming house. Merely because the accused is the owner of, the premises, the presumptions arising under Sections 6 and 7 would not be sufficient to hold him guilty of the offence u/s 8 of the Act, The learned Magistrate, in my opinion was right in holding the accused not guilty. This appeal therefore, fails and is accordingly dismissed.