

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.1240 of 2007

Date:8th June, 2015

Between :-

Gangireddipalle Sankara and others

.. Petitioners

And

The State of A.P.

Rep.by its Public Prosecutor.

.. Respondent

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.1240 of 2007

ORDER:-

This revision petition is directed against the Judgment in Crl.Appeal No.33 of 2007, dated 10-09-2007, on the file of the II-Additional District & Sessions Judge, Chittoor at Madanapalle.

2. The revision petitioners are A.2, A.6 and A.7 in STC No.13 of 2006 on the file of the Judicial Magistrate of First Class, Thamballapalle, Chittoor District, alleging that on 21-03-2006 at about 06.00 p.m., the three revision petitioners along with four others were playing a game card *Mangathai*, which is a game of chance, in front of Bhanu Photo Studio of P.Srinivasulu in Molakalacheruvu and accordingly they were arrested and a cash of Rs.1,440/-, 52 playing cards and old mat were seized. Crime was registered and charge-sheet filed.

3. The accused denied the accusations. The prosecution examined PWs.1 and 2 and marked Exs.P.1 to P.3 and M.Os.1 to 3. No defence was produced. After hearing the arguments of both sides and perusing the material on record, by Judgment, dated 27-02-2007, the learned Magistrate found the revision petitioners and four others

guilty of the offence punishable under Section 9(1) of the A.P.Gaming Act and convicted each one of them to undergo simple imprisonment for four days and to pay a fine of Rs.50/-. Aggrieved by the said conviction and sentence, all the seven accused filed Criminal Appeal No.33 of 2007 and by Judgment, dated 10-09-2007, the appellate Court confirmed the conviction and sentence. Hence, the revision.

4. The contention of the revision petitioners is that the police officer, who has conducted the raid has himself investigated the crime and filed charge-sheet which is improper. It is further contended that even though several independent witnesses are available, the police officers have not taken anyone of them. Except for the evidence of the S.I. of Police and the Police Constable, who are examined as PWs.1 and 2, absolutely no evidence was produced. Both the Courts below have erroneously relied upon their testimony and found them guilty.

5. On the other hand, learned Public Prosecutor submits that the evidence of the Investigating Officer and the Police Constable found to be trustworthy and reliable, the Courts below have convicted the appellants/accused and others and there are no merits in the revision and the same is liable to be dismissed.

6. The point that arise of consideration is as to whether the prosecution could prove its case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffers from any material illegality or irregularity warranting interference by the revisional Court?

7. **Point:-** A perusal of the entire material on record and the impugned Judgments of both the trial Court as well as the first appellate Court clearly show that the entire case is based on the testimony of PW.1 and PW.2, who are the Police Constable and the S.I. of Police.

8. As contended by the learned Public Prosecutor and as observed by both the Courts below, there is no embargo as such that the

evidence of the Police Officers cannot be made the basis for determining the guilt or otherwise of the accused. However, it has been repeatedly cautioned that the evidence of the Police Officers has to be appreciated with utmost care and caution. Only when the testimony is reliable, convincing and inspiring, the same can be made the basis. Further more, when a search or a raid has been conducted at a public place, and when there is possibility of securing the presence of independent witnesses, it is obligatory on the part of the police officers to secure the presence of the independent panch witnesses so as to rule out the possibility of there being any false implication or an innuendo that for statistical purposes or for any other considerations, the police case is foisted.

9. In the instant case, it is the case of the police officer that at about 06.00 p.m., at a public place, the three revision petitioners along with four other persons are playing cards known as *Mangathai*. Absolutely, no evidence is placed on record to show that it is a game of cards which is prohibited. All types of games involving playing cards are not punishable. Therefore, it is incumbent on the part of the prosecution to establish that the revision petitioners and others were playing the game of cards which is prohibited. Both the Courts below have failed to take into consideration this material aspect. Except for a self-serving statement of the police officer that the game which is locally known as *Mangathai* is the game of chance amounting to gambling, absolutely no evidence is placed on record. Therefore, benefit of doubt should go in favour of the revision petitioners/accused. The findings of the Courts below that the petitioners have indulged in playing the game of cards prohibited by law is therefore liable to be set aside. The point is answered accordingly.

10. In the result, the Criminal Revision Case is allowed setting aside the Judgments of both the Courts below. Consequently, the revision petitioners/accused Nos.2, 6 and 7 are acquitted of the charges levelled against them. The bail bonds executed by them shall stand

cancelled. The fine amount, if any, paid by them shall be refunded.

The miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

8th June, 2015
smr