

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.4197 of 2011

ORDER :

This petition, under Section 482 of Cr.P.C., is filed by the petitioner/revision petitioner/accused No.5 to quash the conviction and sentence imposed in S.T.C. No.21 of 2007, dated 7.8.2009 on the file of the I Additional Chief Metropolitan Magistrate, Vijayawada, as confirmed in CrI.R.P. No.52 of 2009, dated 25.2.2011 on the file of the Metropolitan Sessions Judge, Vijayawada.

The contention of the petitioner/accused No.5 is that the trial court as well as the revisional court shifted the burden on the petitioner, which is contrary to law. The witnesses are only police officers as per Ex.P1, therefore, there is no independent evidence.

On the other hand, the learned Public Prosecutor contended that accused were caught red handed while playing cards under street lights in the mid night, therefore, the Police Officers are only witnesses.

The brief case of the prosecution is that the petitioner and others were playing cards betting money under the street lights and they were caught red handed and the Police seized playing cards and cash of Rs.32,125/- from them.

Before the trial Court, P.Ws.1 to 3 were examined and Ex.P1 and M.Os.1 and 2 were got marked.

The Police Constables are examined as P.Ws.1 and 2, besides examining the Sub-Inspector of Police as P.W.3. Their consistent evidence is that on the intervening night of 2/3.5.2007 at about 1.30 AM while they were on night duty, they found that the petitioner and others playing the game of *kotha mukka* which is a game of chance by betting money under street lights. The police seized cash of Rs.32,125/- and the playing cards (M.Os.1 and 2) under Ex.P1.

With regard to the contention of the petitioner that all the witnesses are police officers was dealt rightly by the trial Court as well as the revisional court and found that there is no dispute with regard to the fact that the petitioner and others were playing cards at about 1.30 AM under street lights. The same facts are corroborated by the evidence of P.Ws.1 to 3. The trial court found that there is no necessity for the police to invest Rs.32,125/- and 52 playing cards for the purpose of implicating the accused and the same was confirmed by the revisional court finding that there is no patent irregularity or illegality in the judgment of the trial Court.

Section 9(1) of the A.P. Gaming Act reads as follows :

“Whoever is found gaming or reasonably suspected to be gaming in any public street or thoroughfare or in any place to which the public have, or are permitted to have, access shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to three hundred rupees or with both.”

From the above, it is very clear that the person who is found gaming in a public place is liable to be punished with imprisonment

which may extend to 3 months or with fine which may extend to Rs.300/- or with both.

During the course of arguments, the counsel for the petitioner reported that the petitioner has paid a fine of Rs.100/- as directed by the trial Court and as confirmed by the revisional court.

Having considered the nature of the offence i.e., the petitioner, along with others, was found while playing game of *kotha mukka*, which is a game of chance, by betting money under street lights, I find that imposition of fine alone will meet the ends of justice.

Therefore, the imposition of fine of Rs.100/- in default to undergo simple imprisonment for 3 months ordered by the trial court and confirmed by the revisional court is hereby confirmed, but however, the sentence of imprisonment for 3 months ordered against the petitioner/accused No.5 is hereby set aside.

Accordingly, the Criminal Petition is disposed of.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

25th October, 2017

skmr