

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL REVISION CASE NO. 3078 OF 2015

Between:

V. Sinivasa Rao and others

... Petitioners

Vs.

The State of Andhra Pradesh,
Rep. by Public Prosecutor, High Court at Hyderabad
Through Inspector of Police, Tirupathi Rural

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 12-10-2018

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE P. KESHA RAO

- 
1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? : No
2. Whether the copies of judgment may be
marked to Law Reporters/ Journals : Yes
3. Whether Your Lordships wish to
see the fair copy of the Judgment? : Yes

P. KESHA RAO, J

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HON'BLE SRI JUSTICE P. KESHA VA RAO

+ CRIMINAL REVISION CASE NO.3078 OF 2015

Between:

% V. Srinivasa Rao and others

...Petitioners

Vs.

\$ The State of Andhra Pradesh,
Rep. by Public Prosecucutor, High Court at Hyderabad
Through Inspector of Police, Tirupathi Rural

.. Respondents

! Counsel for the petitioners : Si Challa Ajay Kumar

^ Counsel for the Respondent : Public Prosecutor(AP)

< GIST:

> HEAD NOTE :

? Cases referred :

1. 2002(1) ALD (CrL.) 218 (AP)
2. 2003(10) ALD (CrL.) 411 (AP)



HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No. 3078 of 2015

O R D E R

Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent-State.

The present revision is filed aggrieved by the orders passed in CrI.A.No.31 of 2015 dated 11.09.2015 on the file of the Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupathi, Chittoor District so far as the confiscation of Rs.2,88,487/- to the State Government.

The facts in brief are that Sri T.Subbanna, Inspector of Police, Tirupathi Rural registered a case in Crime No.74 of 2008 of Alipiri Police Station against the petitioners and others for the offences under Sections 3 and 4 of the A.P. Gaming Act, 1974 (hereinafter referred to as 'the Act'). After filing the charge sheet, the First Special Judicial Magistrate of Second Class, Tirupathi, taken cognizance of the above said offences, numbered the case as STC No.168 of 2008. After trial, the learned Magistrate, by orders dated 30.12.2011 held that A-1 and A-3 to A-41 are not guilty for the offences under Sections 3 and 4 of A.P. Gaming Act and accordingly they were acquitted under Section 255(1) Cr.P.C. However, the case property i.e. M.O.1 cash of Rs.2,88,487/- which was already confiscated to the State held stands good. Aggrieved by the said judgment, the petitioners filed CrI.A.No.31 of 2015 on the file of the Court of the Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupathi. After hearing, the learned Special Judge,

by judgment dated 11.09.2015, was pleased to dismiss the appeal confirming the order of confiscation of the case property i.e. M.O.1 cash of Rs.2,88,487/- to the State as per the judgment in STC No.168 of 2008. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioners, contended that both the Courts below committed a material irregularity in exercise of jurisdiction vested in them, in confiscating the M.O.1 cash of Rs.2,88,487/- in favour of the State after acquitting the petitioners for the offences under Sections 3 and 4 of the Act. Even as per mahazar dated 06.04.2008, the said money was seized by the police from the petitioner and as such after acquittal, it ought to have been returned to the petitioners.

Per contra, the learned Public Prosecutor appearing for the respondent-State, supported the impugned judgment. He contended that the petitioners did not claim the amount when they were examined under Section 251 Cr.P.C. and therefore, the order passed by the lower Court and as confirmed by the appellate Court with regard to confiscation of M.O.1 cash of Rs.2,88,487/- is legal and proper and does not warrant any interference from this Court in revision. He further contended that since the scope of revision is very limited, the petitioners cannot claim refund of the said amount when both the courts below concurrently held that the petitioners are not entitled for refund of the amount.

Having heard both the learned counsel and from the perusal of the material on record, the admitted facts are that the petitioners have been charged for the offences under Sections

3 and 4 of the Act. On full-fledged trial, they were acquitted for the above said offences in STC.No.168 of 2008 by judgment, dated 30.12.2011 by the I Special Judicial Magistrate of Second Class, Tirupathi. However, M.O.1 cash of Rs.2,88,487/- was confiscated to the State. To the extent of the above said amount, the petitioners filed CrI.A.No.31 of 2015. After hearing, the appeal was also came to be dismissed by judgment dated 11.09.2015.

Now, the point that arises for consideration is whether the amount of Rs.2,88,487/- is liable to be confiscated to the State when the petitioners are acquitted for the offences under Sections 3 and 4 of the Act?

The learned Magistrate after appreciation of the material as well as the documentary evidence available on record, came to a conclusion that the prosecution failed to establish the guilt of the petitioners for the offences under Sections 3 and 4 of the Act beyond all reasonable doubt leading to the acquittal of the petitioners under Section 255(1) Cr.P.C.

From the facts, it is noticed that the judgment of acquittal of the petitioners has become final. Section 12 of the Act says that on conviction of any person under Section 9, the convicting magistrate may order that-- (i) all the instruments of gaming seized, shall forthwith be destroyed or forfeited.

Thus, from the above said provision, it is clear that the magistrate is empowered to order forfeiture or destruction of all instruments of gaming seized on conviction of the individual under Section 9 of the Act. Therefore, it is clear that the order of

conviction alone would result in forfeiture of any of the instruments of game or destruction thereof. In fact, the conviction of the accused under Section 9 of the Act is a condition precedent for ordering forfeiture or destruction of instruments of game seized by the police and produced before the learned Magistrate. In similar circumstances, this Court in *SHAIK ZAHEER v. STATE OF A.P.*¹ while discussing the provisions of the Act with regard to confiscation of the amount in favour of the State while acquitting the accused held as under:

“It is thus clear that the learned Magistrate is empowered to order forfeiture or destruction of all the instruments of game seized on conviction of the individual under Section 9 of the Act. Therefore, it is clear that the order of conviction alone would result in forfeiture of all the instruments of game or destruction thereof. Conviction of the person under Section 9 of the Act is a condition precedent for ordering the forfeiture or destruction of the instruments of game seized by the police and produced before the Magistrate, Sub-section (4) of Section 2 of the Act defines instruments of gaming which includes cards, dice, gaming tables, or clothes, boards or any other article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or record or evidence or any gaming, the proceedings of any gaming and any winnings or prizes in money or otherwise, distributed or intended to be distributed in respect of any gaming. Therefore, the money used as a subject or means of gaming is an instrument of gaming. Such instrument of gaming including the money is liable to be forfeited or destroyed as the case may be on conviction of the person under Section 9 of the Act is accordingly empowered to forfeit or destroy the instruments of gaming.

But, in the instant case, the learned Magistrate having acquitted the petitioner herein of the charge for the offence punishable under Section 9 of the Act ordered confiscation of the amount seized from the petitioner. In the circumstances, there is absolutely no difficulty whatsoever to declare that the order of confiscation passed by the learned Magistrate and confirmed in the revision by the learned Additional Metropolitan Sessions Judge is totally untenable and unsustainable in law. The order is vitiated by an error apparent on the face of the record. The order has resulted in manifest injustice contrary to law.”

¹ 2002(1) ALD (Cri.) 218 (AP)

In A. BHASKAR AND OTHERS v. STATE OF A.P.² this Court held as under:

“The order of conviction alone would result in forfeiture of any of the instruments of game or destruction thereof. The conviction of the person under Section 9 of the Act is a condition precedent for ordering forfeiture or destruction of instruments of game seized by the police and produced before the learned Magistrate.”

In the instant case, the learned Magistrate though acquitted the petitioners, ordered confiscation of M.O.1 cash of Rs.2,88,487/- seized from the petitioners. In fact, it is the specific case of the petitioners that M.O.1 cash was high-handedly snatched away by the police from their pockets and produced before the Court and thereby it may not also be treated as the instrument of the game as defined under sub-section 4 of Section 2 of the Act, since the money used as a subject or means of gaming is also an instrument of gaming. Therefore, such instrument of gaming including the money is liable to be forfeited or destroyed as the case may be on conviction. In the instant case, both the Courts below have acquitted the petitioners for the offences under Sections 3 and 4 of the Act, but ordered confiscation of the amount seized from the petitioners. Under these circumstances, there is absolutely no difficulty in holding that the order of confiscation as passed by the learned Magistrate and as confirmed in the appeal by the learned Special Sessions Judge-cum-IV Additional Sessions Judge is totally untenable and unsustainable in law. Both the orders are vitiated by an error apparent on the face of the record resulting in manifest injustice.

² 2003(10) ALD (CrI.) 411 (AP)

Accordingly, the criminal revision case is allowed setting aside the orders passed in CrI.ANo.31 of 2015 dated 11.09.2015 on the file of the Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupathi, Chittoor District confirming the order of confiscation of Rs.2,88,487/- cash to the State Government in STC No.168 of 2008 dated 30.12.2011. Both the orders are accordingly quashed. Consequently, there shall be a direction for refund of M.O.1 cash of Rs.2,88,487/- to the petitioners within a period of three months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

Date:12.10.2018

Ccm

Note:

LR copy to be marked.

B/O

ccm

P. KESHA VA RAO,J



HON'BLE SRI JUSTICE P. KESHA VA RAO



CRIMINAL REVISION CASE No. 3078 of 2015

Date:12.10.2018

ccm