

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.09.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.265 of 2016

Gunasekaran

.. Petitioner/Accused

Vs

State rep by its
The Inspector of Police,
St. Thomas Mount Police Station,
Chennai.

.. Respondent/Complainant

Prayer: This Criminal Revision Petition has been filed, under section 397 read with 401 of Cr.P.C, to call for the records in the Judgment, dated 20.11.2015, made in Crl.A.No.32/2009, on the file of the Principal Sessions Judge, Kancheepuram District at Chengalpattu, by confirming the order and Judgment, dated 28.04.2009, made in STC.No.70/2009, by the Judicial Magistrate, Alandur and set aside the same aqutit the Petitioner.

For Petitioner : Mr.H.Mohamed Ghouse,
appointed as Amicus Curie
For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

1. This Criminal Revision Revision has been filed, against the Judgment, dated 20.11.2015, made in Crl.A.No.32/2009, on the file of the Principal Sessions Judge, Kancheepuram District at Chengalpattu, confirming the Judgment, dated 28.04.2009, made in STC.No.70/2009, by the Judicial Magistrate, Alandur and set aside the same.
2. The matter had been listed for hearing on 12.09.2019 and there was no representation for the petitioner and thereby, the case was ordered to be posted for dismissal on 19.09.2019. On 19.09.2019 also there was no representation for the petitioner and thereby, this Court appointed Mr.H.Mohamed Ghouse, as Amicus Curie, to appear for the petitioner.
3. The only ground raised in the revision petition is that the petitioner had been charged for the offence under Section

49-A (a) (i) (ii) of the Madras City Police Act, however, strangely, the conviction is for the offence under Section 49-A (a) (i) (ii) of the Tamil Nadu Gaming Act and thereby, the Courts below have committed illegality and thereby, the counsel would seek for set aside the orders of the Courts below.

4. The learned Additional Public Prosecutor would submit that it is only a wrong quoting of the Act, whereas, by cogent evidence, the prosecution has proved the charges that the petitioner/accused was conducting gambling in the house premises of the 2nd accused and thereby, the Courts below have rightly found the petitioner/accused guilty and convicted him for the offence committed by him. The Provisions/contents of Section 49-A (a) (i) (ii) of the Madras City Police Act, 1998 and Section 49-A (a) (i) (ii) of the Tamil Nadu Gambling Act are parimateria one and the same since both provisions deal with gambling in a house. By quoting a wrong provision of Law no prejudice has been caused to the petitioner and that such a thing has not resulted in failure of justice. He would further submit that as per Section 464 of Cr.P.C., no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any mis-joinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned. In this case, by quoting a wrong provision as no prejudice or failure of justice has occasioned to the petitioner. He would further submit that the provisions quoted or parimateria one and the same and the prosecution has let in cogent evidence to prove the case. Further, the same ground was raised by the petitioner/accused before the Appellate Court and the Appellate Court finding that no prejudice had been caused to the petitioner/accused and finding that no failure of justice has occasioned had dismissed the appeal and confirmed the conviction and sentence.
5. This Court heard the submissions made by the learned counsel on both sides and gone through the impugned orders of the both courts below and perused the materials placed on record.
6. It is relevant to refer to Section 49-A (a) (i) (ii) of the Madras City Police Act, 1888 Section 4 of the Tamil Nadu Gambling Act, 1930, as held as under:
"49-A. Penalty for opening etc., any enclosure,
etc., for certain forms of gaming. _ Whoever -
(a) being the owner or occupier or -
having the use of any house, room,
tent, enclosure, vehicle, vessel

or place, opens, keeps or uses the same for the purpose of gaming _

(i) on a horse-race, or

(ii) on the market price of cotton, bullion, or other commodity or on the digits of the number used in stating such price, or"

"4. Penalty for opening etc., for certain forms of gaming

(1) Whoever -

(a) being the owner or occupier or having the use of any house, room, tent, enclosure, vehicle, vessel or place, opens, keeps or uses the same for the purpose of gaming_."

(i) on a horse-race, or

(ii) on the market price of cotton, bullion or other commodity or on the digits of the number used in stating such price, or

(iii) on the amount or variation in the market price of any such commodity or on the digits of the number used in stating the amount of such variation, or

7. The above sections are parimateria one and the same, the case of the prosecution against the petitioner was that he was using the premises, for the purpose of gaming subject and the allegations leveled are also same.
8. The prosecution has proved its case beyond reasonable doubts. Though charges have been framed for the offence under the Madras City Police Act, the Trial Court, rightly finding that the Madras City Police Act was not applicable to the area had in the alternate, convicted the petitioner for the offence under Section 4 of the Tamil Nadu Gambling Act. The Appellate Court having perused the records had held that by such Act, no prejudice has been caused to the petitioner/accused and that it has not resulted in failure of justice and thereby, had confirmed the conviction and sentence passed by the Trial Court.
9. As per Section 464 of Cr.P.C., No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission, or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned

thereby.

10. In the opinion of this Court, by convicting the petitioner no failure of justice has in fact occasioned thereby, there is no merit in the revision case. I do not find any error or perversity in the orders passed by the courts below.

11. In view of the above, this Criminal Revision Petition is dismissed.

12. Before parting with the matter, this Court place it on record, the commendable service referred by Mr.H.Mohamed Ghouse, learned counsel as Legal Aid Counsel for the petitioner, he is entitled to remuneration from the Tamil Nadu State Legal Services Authority, as per norms.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssi

To:

1. The Principal Sessions Judge, Kancheepuram District at Chengalpattu.
2. The Judicial Magistrate, Alandur.
3. The The Inspector of Police, St. Thomas Mount Police Station, Chennai.
4. The Public Prosecutor, High Court, Chennai.
5. The Secretary,
Tamil Nadu State Legal Services Authority,
Chennai.

Crl.RC.No.265 of 2016

A.SK(09/01/2020)

WEB COPY