

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 692 of 2005

UTTAM HARIJAN & ORS.

VS.

STATE OF WEST BENGAL

For the Petitioners : Mr. J.N. Chatterjee, Adv.

For the Opposite Party : Mr. R. Roychowdhury, Adv.

Hearing concluded on : 7th September, 2022

Judgement on : 12th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure, seeking order quashing the judgement passed by learned Additional Sessions Judge, Fast Track, 1st Court, Cooch Behar in Criminal Appeal No. 30 of 2003 affirming the judgement and order of conviction passed by learned Judicial Magistrate, 2nd Court, Cooch Behar in G.R. Case No. 351/02 (T.R. No. 14 of 2003 on 19th November, 2003).
2. Briefly stated, on 14th October, 2001 at about 22.15 hours Town Sub-Inspector of Police held a raid in the house of Uttam Harijan and found four persons including Uttam were playing cards in lieu of money,

using the said house as common gaming house. The persons engaged in gambling made an unsuccessful attempt to flee the place of occurrence. All of them were rounded up and police arrested 52 pieces of playing cards, one candle and a sum of Rs. 7210/- as alamat and board money.

3. On the basis of information given by S.I. Suroj Thakuri, Kotwali P.S. Case No. 344 of 2002 was registered on 15th October, 2002. Police took up investigation, submitted charge sheet against all the four accused persons under Section 3/4/11 of West Bengal Gambling and Prize Competition Act, 1957.
4. The charge was framed against all the accused persons under Section 3/4/11 of West Bengal Gambling and Prize Competition Act, 1957 pleading their innocence, the accused persons claimed to be tried.
5. In course of trial prosecution examined as many as 6 witnesses. All of them were police personnel and members of the raiding team.
6. Learned Trial Court having considered the evidence adduced by prosecution witness was pleased to record an order of conviction against all the four accused persons. Accused Uttam Harijan was sentenced to suffer imprisonment for six months for committing offence under Section 3 of the West Bengal Gambling and Prize Competition Act and to pay fine of Rs. 1000/- and all other accused persons including Uttam Harijan were sentenced to suffer rigorous imprisonment for three months for committing offence under Section 4 of the West Bengal Gambling and Prize Competition Act and they are

further directed to pay 200/- each for committing offence under Section 11 of the West Bengal Gambling and Prize Competition Act.

7. The aggrieved convicts preferred an appeal against the judgement and order of conviction of the Trial Court before the learned Additional Sessions Judge, Fast Tract, 1st Court, Cooch Behar.
8. Learned Appellate Court, however, did not find any merit in appeal and maintained the order of conviction passed by the learned Trial Court.
9. Hence by filing the application under consideration, the petitioners are inviting the Court to quash the judgement passed by the learned Appellate Court affirming the order of conviction passed by learned Trail Court.
10. Mr. Jayanta Narayan Chatterjee, Learned Advocate appearing for the petitioners submits that the petitioners were not playing cards in lieu of money or in other words they were not engaged in gambling rather they being the organizers of Durga Puja and Uttam Harijan being the treasurer were engaged in the affair of Durga Puja, while police rounded them up and seized the money collected as donation for the purpose of Puja and showed the said donation as board money to book them with criminal liability.

According to Mr. Chatterjee there was no common gaming house as defined under the West Bengal Gambling and Prize Competition Act, 1957. The incident took place on the day of Navami Puja at about quarter past ten but no independent witness was cited as witness to the seizure.

According to Mr. Chatterjee both the Courts below did not have any reason to record an order of conviction rather benefit of doubt could have been extended to the convict petitioners.

11. Refuting such contention learned Advocate Mr. R. Roychowdhury representing State submits that in absence of any evidence to show any special reason, the witnesses being police personnel should not be disbelieved. All the witnesses stood the test of cross-examination and nothing has come out to impeach their credibility.

According to Mr. R. Roychowdhury, learned Advocate for the State the order of conviction duly affirmed by learned Appellate Court, does not warrant any interference.

12. Section 3 and 4 of the West Bengal Gambling and Prize Competition Act, 1957 envisage:-

“4. Penalty for being found in common gaming house.

Whoever is found in any house, room, tent, walled enclosure, space, vehicle, vessel or any place referred to in section 3 playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be punishable, on conviction, with fine -[with rigorous imprisonment for a term which may extend to three years but shall not be less than three months and with fine which may extend to five hundred rupees]; and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the

contrary be proved, to have been there for the purposes of gaming.

3. Penalty for owing or keeping or having charge of common gaming house.

*Whoever, being the owner or occupier or having the use of any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever, opens, keeps, or uses the same as a common gaming house; and whoever, being the owner or occupier of any such house, room, tent, walled enclosure, space, vehicle, vessel or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming house; * and whoever has the care or management of, or in any manner assists in conducting the business of any house, room, tent, walled enclosure, space, vehicle, vessel or place as aforesaid opened, occupied, used or kept for the purpose aforesaid; and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, room, tent, walled enclosure, space, vehicle, vessel or place as aforesaid; shall be punishable on conviction, with fine '[with rigorous imprisonment for a term which may extend to three years but shall not be less than six months and with Fine which may extend to two thousand rupees]."*

13. Therefore, the prosecution is under obligation to prove that Uttam Harijan was the owner or occupier of the place wherefrom the

petitioners were rounded up by police for allegedly playing cards in lieu of money. Particularly when the prosecution has made a specific averment that the house of Uttam Harijan was being used as common gaming house.

14. Upon careful perusal of material on record I find that both the Courts below took the statement made by the informant in the F.I.R. and on oath on the face value that the accused persons were found to have been playing cards in lieu of money in the house of Uttam Harijan, without any cogent document.
15. Both the Courts below placed reliance on the Exhibit-4, record the order of such conviction and Exhibit-4 is a sketch map prepared by police, which in my view is not a proper document to hold that the alleged place of occurrence was owned or occupied by Uttam Harijan.
16. Thus, in my view, the charge under Section 3 of the said Act cannot be held to have been proved beyond reasonable doubt. Section 4 of the West Bengal Gambling and Prize Competition Act says when offence within the meaning of Section 3 has not been established or in other words it has not been proved that the petitioners were rounded up from common gaming house, they cannot be saddled with liability for committing any offence within the meaning of Section 4 of the Act.
17. Section 11 of the West Bengal Gambling and Prize Competition Act, 1957 envisages:-

“11. Power of police officer to enter and arrest persons, who print, publish, etc. matters relating to gaming.

A police officer may arrest without warrant any person who prints, publishes, sells, distributes or in any manner circulates any newspaper, newssheet or other document or any news or information with the intention of aiding or facilitating gaming; and any police officer may enter and search any place for the purpose of seizing, and may seize all things reasonably suspected to be used or to be intended to be used for the purpose aforesaid. All persons taken in custody as aforesaid shall be produced before the nearest magistrate within a period of twenty-hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate. Each of all such persons shall be punishable, on conviction, with fine not exceeding two hundred rupees or with imprisonment for a term not exceeding one month or with both.”

This Section empowers the police to arrest without warrant any person who prints, publishes, sells, distributes or in any manner circulates any newspaper, newssheet etc. with the intention of aiding or facilitating gaming. There is no such allegation against the petitioners to have indulged in offence within the meaning of Section 11 of the West Bengal Gambling and Prize Competition Act, 1957.

18. In my view, therefore, the petitioners are suffering an unmerited order of conviction which should not be allowed to remain in force and should be set aside which I accordingly do.

19. Consequently the petitioners having found not guilty to the charge under Section 3/4/11 of the West Bengal Gambling and Prize Competition Act are acquitted from the charges rather quite they have set at liberty and discharged from bail bond.
20. Seized money be returned from whom seized. Seized alamats may be destroyed.
21. Thus the case is disposed of on contest but without cost.
22. Let a copy of this judgement be sent down to learned Court below for information and necessary action.
23. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)