

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 719 of 2013

Siyaram Shaw @ Gupta & Ors.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Subhasish Pachhal

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on : 21.02.2024, 12.03.2024, 19.06.2024

Judgment on : 16.08.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners against the order dated 30.11.2012 passed by the Learned Additional District and Sessions Judge, Fast Track Court No. VI, Calcutta in criminal revision no.113/12 arising out of order dated 05.05.2010 passed by the Learned Additional Chief Metropolitan Magistrate, Calcutta in connection with Case No. C-254/02, G.R. No. 1712/02, T.R. No. 45/2004 under Section 3 & 4 of the West Bengal Gambling and Prize Competition Act, thereby convicting the accused persons for the offence under Section 4 of the above said Act and sentenced for 3 months rigorous imprisonment each for the said offence.

2. The petitioners have been made accused in connection with Section C Case No. 254 dated 04.11.2002 corresponding G.R. No. 1712/02 under Section 3 & 4 of the West Bengal Gambling and Prize Competition Act pursuant to a written complaint lodged by one Sub-Inspector of Police Debal Kumar Das of Burtalla Police Station on 03.11.2012.
3. The allegation as stated in the written complaint was that on 03.11.2002 in the dead at night the police personnel of Burtalla Police Station held a raid in a room situated at 19/A/H/22, Goabagan Street and arrested 6 persons inside the room on the allegation of Gambling with cards and also seized a cash of Rs.3,400/- as board money and those persons were arrested for offences punishable under Section 3 & 4 of the West Bengal Gambling and Prize Competition Act.
4. The police upon completion investigation submitted charge-sheet under Section 3 & 4 of the West Bengal Gambling and Prize Competition Act against 6 charge-sheeted accused persons.
5. By the judgment and order dated 05.05.2012, the Learned Court of A.C.M.M. Calcutta held the accused petitioners guilty and thereby convicted them under Section 4 of the said Act, but acquitted them from the charge under Section 3 of the said Act and sentenced them to suffer rigorous imprisonment of 3 months each.
6. The petitioners challenging the said judgment and order dated 05.05.2012 preferred one revisional application under Section 397 read with 401 of the Code of Criminal Procedure being criminal revision no.113 of 2012 and the

Learned Additional District and Sessions Judge, Fast Track 6th Court, Calcutta by the judgment dated 30.11.2012 dismissed the said revisional application and affirmed the judgment and order dated 05.05.2010 passed by the Learned Additional Chief Metropolitan Magistrate, Calcutta.

7. The offences under Section 3 & 4 of the West Bengal Gambling and Prize Competition Act were distinct and only the owner of the game house or in charge of the gambling house should be liable for the offence committed under Section 3 of the Act and Section 4 of the said Act should only be against the persons who allegedly participated or present, as such both the Learned Court below erred in law by convicting the petitioners under Section 4 of the Act in absence of the ingredients for attracting offence under Section 3 of the Act.
8. It was further submitted the prosecution in order to bring home the charge against the petitioners has examined three witnesses, out of the aforesaid three witnesses two witnesses were the police personnel and the members of the raiding party and the witness no.3 was a seizure list witness and therefore in absence of any independent witnesses to support the prosecution case.
9. PW-1 himself was the seizing officer and also complainant of the case and on the basis of his G.D. the case was initiated and the said complainant himself seized the articles and prepared the seizure list and also arrested the accused and lodged formal first information report and it appeared that the said complainant himself was the prosecutor as well as the investigating

officer which was neither desirable nor it was appropriate or proper as per law and to wipe out the possibilities of grudge and bias against the accused persons and to meet the demand of fair and independent investigation such steps should not have been taken.

10. It was further submitted the alleged seizure was conducted on 03.11.2002, but the seizure list was prepared on 04.11.2012 and there was no plausible explanation on the part of the prosecution of such delay in preparing the seizure list and therefore such belated action of PW-1 could be tainted with malice and may be an afterthought attempt on his part.
11. It was further submitted as far as the evidence of PW-3 was concerned, although being a seizure list witness seized item was placed before him for identification and further he could not identify the accused persons on dock and the seized article was not produced in Court for his identification.
12. The incident of seizure took place in the night 03.11.2002 and the seizure list was prepared on 04.11.2002 and in absence of any explanation of such delay the prosecution case became ambiguous.
13. On 03.11.2002 at night a raid was conducted in room of premises no. 19A/H/22, Goabagan Street, and found seven persons inside the room were gambling with cards, board, pencil, cash etc. and the Police immediately arrested six persons and the rest fled and the materials collected from the spot including a cash amount of Rs.3,400/- were seized and a seizure list (exhibit-3) was prepared.

Although Police submitted Charge Sheet Under Section 3 and 4 of The West Bengal Gambling and Prize Competition Act against all the six persons, but three of them absconded and their trial could not be held and so far the present petitioners were concerned, they have faced the trial and ultimately, by the Judgment and Order dated 05.05.2012 the petitioners were convicted and sentenced for 3 months rigorous imprisonment each for the offence Under Section 4 of the Act though the petitioners were acquitted from the charge Under Section 3 of the Act.

In course of trial prosecution examined three witnesses and out of the three witnesses two were Police personnel and the other was the Seizure List witness.

14. PW-1 the S.I. of Police stated that at about 12:10 a.m., he went in one room of premises no. 19/A/H/22, Goabagan Street and noticed the accused persons were engaged in playing gambling with cards, board, pencil etc. and he arrested the seized articles and prepared Seizure List and on returning to P.S. lodged G.D. Entry and on the basis of said G.D. Entry formal F.I.R. was recorded (Ext.-2). PW-1 himself started investigation of the case and subsequently, the case diary was handed over to one Samir Kumar Chandra, S.I.

15. During cross examination a suggestion was put to the witness that witnesses of the Seizure List were brought to the Police Station and further he did not make any G.D. Entry before holding raid. The witness also admitted that

although the date of incident is 03.11.2002, but in the Seizure List the date has been mentioned as 04.11.2002 and the witness also admitted that he being the person lodged the complaint and also conducted investigation.

16. PW-2 Also a Sub Inspector of Police and submitted Charge Sheet after getting the case diary from PW-1 and stated that he did not have any personal knowledge about the incident of the case.
17. PW-3, the Seizure List witness deposed about 3/4 years back at about 11:30 p.m. the local Police Officer called him at the P.S. and asked him to sign on a paper and his ignorance of personal knowledge.
18. Considered the submission of Learned Advocate for the petitioners as well as the Learned Advocate for the State.
19. Section 3 and 4 of the West Bengal Gambling and Prize Competition Act, 1957 envisage:-

12. "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]."*

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14. The accused persons were found to have been playing cards in lieu of money in the house any cogent document."

20. Being informed by the landlord of the tented premises, the police had been into the spot and arrested the appellants on charge of gambling however failed to produce any valid documents to show that the appellants were involved in an illegal act. Admittedly on the night of a religious occasion, the appellants were found engaged in playing cards and a sum of Rs.3,400/- was recovered without corroborative evidence. The evidence of the seizure list witness, i.e. PW-3, did not support the process of seizure. Though the members of the raiding party, including the complainant can be the investigating agency however in the instant case the prosecution should have

established ulterior motive and the illegal intent on the part of the petitioners to indulge in the act of gambling. Mere presence of card, board, pencil and cash devoid of the criminal intent, the act of gambling cannot be proved.

21. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.

22. Accordingly, the instant criminal appeal being CRR 719 of 2013 is disposed of.

23. There is no order as to costs.

24. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

25. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)