

Kishan Chander

Vs

State of Madhya Pradesh

Criminal Appeal No. 47 of 1961

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

25.01.1963

JUDGMENT

HIDAYATULLAH, J. -

This is an appeal by special leave against an order of the Madhya Pradesh High Court (Gwalior Bench), by which a criminal revision filed by the three appellants was dismissed. The three appellants with five others were tried for offences under s. 4 of "The United State of Gwalior, Indore and Malwa (Madhya Bharat), Gambling Act, Samvat 2006", (Madhya Bharat Act No. 51 of 1949) (Samvat 2006). Krishnachandra, the first appellant, was also tried under s. 3 of the Act. All the original accused except one were convicted under s. 4 of the Act and sentenced to one months' simple imprisonment. Krishnachandra was convicted in addition under s. 3 of the Act and sentenced to one months' simple imprisonment. The sentences in Krishnachandra's case were ordered to run concurrently.

All these persons appealed unsuccessfully to the Court of Session. The three appellants then filed a petition for revision in the High Court. The High Court also issued a notice under s. 439 of the Code of Criminal Procedure to these appellants to show cause why the sentences passed on them should not be enhanced. The High Court by its order dated December 14, 1960, dismissed the revision petition filed by the appellants and in addition to the sentence of imprisonment imposed a fine of Rs. 200 on each count or counts for which they were originally convicted. The Appellants asked for a certificate to appeal to this Court but it was refused by the High Court. The appellants, however, obtained special leave from this Court and have filed the present appeal.

Only one point has been argued before us and it is that s. 6 of the Gambling Act is ultra vires the Constitution and is against the principles of natural justice and the fundamentals of criminal jurisprudence. A similar contention has also been raised about s. 8 of the Act. The Madhya Bharat Act is almost a replica of the corresponding Indian statute. Though it differ slightly in its wording, the purport and intent is almost the same. There are three definitions in s. 2 of the Act which control the later provisions. The expression "gaming" is defined to include "wagering and betting" and the explanation attached to the definition provides :-

"Any transaction by which a person in any capacity whatever employs another in any capacity whatever, or engages for another in any capacity whatever, to wager or bet with another person, and the collection or soliciting of bets, receipt or distribution of winnings or prizes in money or otherwise in respect of wagering or betting or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution, shall be deemed to be "gaming".

"Gaming house" is defined to mean -

"Any house, room, tent, enclosure, space vehicle, vessel or any place whatsoever in which gaming takes place or in which instruments of gaming are kept or used for gaming."

The expression "instruments of gaming" includes -

"any 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 of any gaming, the proceeds of any gaming, and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming".

These definitions show that a gaming house is a place in which gaming takes place or in which instruments of gaming are kept for use for gaming, that is, for wagering or betting etc. or for the purpose of facilitating wagering or betting etc. Two offences have been created by the Act affecting respectively the keeper of a gaming house and persons found gaming or present for the purpose of gaming, in a gaming house, Section 3 which creates the offence affecting the keeper of a gaming house provides as follows :-

"3. Whoever -

- (a) opens, keeps or uses any house, room or place for the purpose of a gaming house;
- (b) being the owner or occupier of any such house, room or place knowingly or wilfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid;
- (c) has the care or management of, or in any manner assists in conducting the business of, any such house, room or place opened, occupied, kept or used for the purpose aforesaid;
- (d) advances or furnishes money for the purpose of gaming with persons frequenting any such house, room or place; shall on conviction be punishable with imprisonment which may extend to six months and with fine :"

A proviso provides for enhanced penalties for the first, second, third or subsequent offences. Section 4 which makes gaming in a gaming house an offence provides :

"4. Whoever is found in any gaming house, gaming or present for the purpose of gaming shall, on conviction, be punishable with imprisonment, which may extend to six months and with fine."

A special presumption is provided as follows :-

"Any person found in any gaming house during any gaming therein shall be presumed, until the contrary is proved to have been there for the purpose of gaming."

A proviso provides for enhanced penalties in the same way as in s. 3.

Section 5 gives powers to certain officers to enter or to authorise police officers (not below the rank of a sub-inspector) to enter and search a gaming house but the power is exercisable only if the officer concerned "is satisfied, upon credible information, and after such inquiry as he may think necessary, that there are good grounds to believe that any house, room, tent, enclosure, space, vehicle, vessel or place is used as a gaming house." Section 6 which is impugned in this appeal then provides as follows :-

"6. When any instrument of gaming has been seized in any house, room, tent, enclosure, space, vehicle, vessel or place entered or searched under the provisions of last preceding section, or about the person of any of those who are found therein and in the case of any other thing so seized, if the Court is satisfied that the officer who entered or searched such house, room, tent, enclosure, space, vehicle, vessel, or place had reasonable grounds for suspecting that the thing so seized was an instrument of gaming, the seizure of such instrument or thing shall be evidence, until the contrary is made to appear that such house, tent, enclosure, space, vehicle, vessel or place is used as a gaming house and that the persons found therein were then present for the purpose of gaming although no gaming was actually seen by the Magistrate or Police Officer."

Section 8 creates a special rule of evidence and it provides :-

"8. It shall not be necessary, in order to convict any person of any offence against any of the provisions of sections 3 and 4 to prove that any person found gaming was playing for any money, wager or stake."

It has been amply proved in the present case that on a search being made instruments of gaming were found in the house and a presumption under s. 6 was therefore drawn against the persons present there.

The impugned sections are challenged under Articles 19 and 21 of the Constitution. The former Article is said to be violated because the sections unreasonably impair the right of assembly and the right to hold and enjoy property. It is not contended that gambling in the form of betting or wagering or as explained in the explanation to s. 2(d) is not an evil from which society needs to be protected. What is complained of is the manner in which the offences of keeping a gaming house and gaming in a gaming house may be proved against the respective offenders. It is contended that this proof largely depends upon the suspicion of an officer and the discovery on search of innocent articles like playing cards and dice and that added to these unreasonable provisions, the burden of proof, which should always lie on the prosecution, is reversed and the alleged offender is required to clear himself of the alleged guilt. It is submitted that the sections are unconstitutional as they offend Articles 19 and 21 of the Constitution. It is further submitted that in these circumstances there is a breach of Article 21 as well.

The argument based on Article 21 need not be separately noticed because if the impugned provisions are found to be constitutional, the curtailment of liberty would not be except according to the procedure established by law. So the only point to consider is whether the impugned provisions of the Act are so unreasonable as to lose the protection of Clauses (3), (4) and (5) of Article 19. The Act is a pre-Constitution measure and it can only be declared void under Article 13. The Act is not challenged on the ground that it was beyond the competence of the Legislature which passed it or that it has ceased to be law otherwise than by the alleged breach of Articles 19 and 21. Once it is

conceded that gambling is an evil, and it is rightly so conceded here, the interests of public order, morality or the general public require that it be eradicated and the only question which survives is whether the law made to do this is unreasonable in its restrictions upon the guaranteed rights. In this connection what must be established by the appellants is that an object which is legitimate in itself has; been achieved in a manner which amounts to an unreasonable curtailment of the guaranteed liberties.

In order to find out whether the impugned provisions can be regarded as unreasonable in the sense explained it is necessary to consider them in some detail. We begin with the definitions. "Gaming" is defined to include wagering and betting which are the commonest forms of gambling but the definition leaves room for inclusion in the term other forms which gambling might take. There is nothing in the definition to make it unreasonable or to offend against any of the guaranteed rights. Next comes the definition of "gaming house". A house becomes a gaming house if gaming takes place there or instruments of gaming are kept there or used for gaming. The definition is no doubt wide and there is not only a long list of places which come within the expression 'gaming house' but the term includes any place whatsoever which answers the rest of the description. But here again there is nothing which is unreasonable or which does not subserve the central purpose. "Instruments of gaming" are next defined to include articles used or intended to be used as a subject or means of gaming, also documents, registers, records, proceeds of gaming and prize money etc. The words "used or intended to be used as a subject or means of gaming" outline the circumstances in which the possession of articles becomes incriminatory under the Act.

Having defined gambling, gaming house and instruments of gaming, the Act provides safeguards against victimisation of innocent persons by putting in certain checks when it proceeds to provide for the detection and prosecution of offenders against the Act. The offences are the keeping of a gaming house (s. 3), gaming in a gaming house (s. 4) and gaming in places to which public have access (s. 12). We are not concerned with the last. Section 5 confers the powers to enter and authorise police to enter and search places believed to be gaming houses. This power is given to a District Magistrate, a sub-divisional magistrate or a police officer not below the rank of a sub-inspector. The officer must be satisfied, upon credible information and after such inquiry as he may think necessary that there are good grounds for belief that any place is used as a gaming house before he makes a search. On entry the officer is empowered to take the persons present there into custody and to search them and to search the place and seize all things reasonably suspected to have been used for the purpose of gaming. Pausing here, it is clear that the power is given the superior officers who are expected to act reasonably and after due satisfaction. But the matter does not end there. After the arrests and seizures have been made the officer who entered the place and seized the articles has to satisfy the Court that his suspicions were based on reasonable grounds and it is only then that the burden is shifted to the accused to prove his innocence. Though the word used in s. 6 is "suspecting" in actual proof this suspicion must be demonstrated to be reasonably based. The safeguards, thus, are - (a) the existence of credible information, (b) the seizure of articles suspected to be instruments of gaming which bear out the information on which action is taken, and (c) proof to the satisfaction of the Court that there are reasonable grounds for holding that the articles seized are instruments of gaming. Once the house is shown to the satisfaction of the Court to be a gaming house the law leaves any one found in it during any gaming, to explain his presence on pain of being presumed to be there for gaming.

Considering the fact that gambling is an evil and it is rampant, that gaming houses flourish as profitable business and that detection gambling is extremely difficult, the law to root out gambling cannot but be in the public interest. Such a law must of necessity provide for special procedure but

so long as it is not arbitrary and contains adequate safeguards it cannot be successfully assailed. In our opinion the Act with which we are concerned contains sufficient safeguards to ensure that there is no danger to any one except to those who are proved to the satisfaction of the Court to keep a gaming house or who can be presumed unless the contrary be proved to be there for the purpose of gaming. We are satisfied that the impugned provisions are constitutional. The appeal fails and is dismissed.

Appeal dismissed.

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