

**(2014) 05 MP CK 0033**

**Madhya Pradesh High Court**

**Case No:** Criminal Revision No. 834/2000

Yusuf Khan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

**Date of Decision:** May 6, 2014

**Acts Referred:**

- Public Gambling Act, 1867 - Section 4A

**Citation:** (2014) CriLJ 2927 : (2014) 4 MPJR 172

**Hon'ble Judges:** N.K. Gupta, J

**Bench:** Single Bench

**Advocate:** S.K. Gangrade, Advocate for the Appellant; Ajay Tamrakar, Panel Lawyer for the State, Advocate for the Respondent

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

N.K. Gupta, J.

Vide judgment dated 25.8.1999 passed by the learned JMFC, Sohagpur in Criminal Case No. 193/98 the applicant was convicted for offence punishable u/s 4A (M.P. Amendment Act) of the Public Gambling Act, 1867 and sentenced with three month's rigorous imprisonment with fine of Rs. 500/-. In default of payment of fine one month's simple imprisonment was also directed. In Criminal Appeal No. 99 of 1999 vide judgment dated 16.6.2000 the learned Additional Sessions Judge, Sohagpur dismissed the appeal filed by the applicant. Being aggrieved with aforesaid judgments passed by both the Courts below the applicant has preferred the present revision.

2. The prosecution's case in short is that on 22.5.1998 the Head Constable Shivbahadur Singh along with the Police Force went to Raghuvanshpura, Sohagpur on information that the applicant Yusuf Khan was involving some persons in gambling by help of satta slips. The Police Force surrounded the applicant and

before witnesses Kamal Singh and Balkishan, it was found that applicant was playing satta with others with the help of various numbers and number slips. A sum of Rs. 1108.85, 15 slips of satta numbers, one pen etc. were recovered from the applicant and he had informed that he was doing such business for co-accused Rajkumar Raghuwanshi. After due investigation a charge sheet was filed before the trial Court against the applicant and Rajkumar.

3. The applicant abjured his guilt. He refused to do any crime. He took a plea that he was bathing in his house and he was arrested from his house and all other materials were implanted upon him. No defence evidence was adduced.

4. The learned JMFC after considering the evidence adduced by the prosecution convicted and sentenced the applicant as mentioned above. In Criminal Appeal No. 99/1999 the learned Additional Sessions Judge accepted the appeal of the co-accused Rajkumar but, the appeal of the applicant was dismissed.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the applicant has challenged the testimony of the witness Head Constable Shivbahadursingh (PW 4) because the independent witnesses Kamal Singh (PW 2) and Balkishan (PW 3) have turned hostile. If evidence given by the various witnesses is examined then it would be apparent that the independent witnesses Kamal Singh (PW 2) and Balkishan (PW 3) have turned hostile whereas, Head Constable Shivbahadursingh (PW 4) has stated that he had caught the applicant red handed when he was playing gambling and therefore, a sum of Rs. 1108.85, one pen and 15 satta slips were recovered from the applicant. He proved the seizure memo Ex. P/1. Head Constable Satish Kumar Yadav (PW 1) has stated that he accompanied Shivbahadursingh but, he could not state that the applicant was caught from a particular premises or not. The applicant took the defence that he was arrested from his house but, such defence could not be established by him. However, it was for Shivbahadursingh (PW 4) to tell that who, gave the money to the applicant for which number and on which stake. He has accepted in para 6 of his statement that there was nobody except the applicant was available on the spot.

7. If the huge sum with some satta slips are recovered from the applicant then, it was for the investigation officer to prove that those were satta slips and therefore, he was expected to tell the reason as to why he found those slips to be satta slips but, in the evidence of Shivbahadursingh, he submitted that neither he saw anybody playing with the applicant through satta slips nor he could show those slips were used for satta purposes.

8. In the present case the charge sheet was filed by the SHO, Sohagpur for offence u/s 4A (M.P. Amendment) of the Public Gambling Act. Section 4A (M.P. Amendment) of the Public Gambling Act may be read as under:

4A. Punishment for printing or publishing digits, figures, signs, symbols or pictures relating to Worli Matkas or other form of gaming-(1) Whoever prints or publishes in any manner whatsoever any digits or figures or signs or symbols or pictures or combination of any two or more of such digits or figures or signs or symbols or pictures relating to Worli Matkas or any other form of gaming under any heading whatsoever or by adopting any form of device, or disseminates or attempts to disseminate or abets dissemination of information relating to such digits or figures or signs or symbols or pictures or combination of any two or more of them shall be punishable with imprisonment which may extent to six months and with fine which may extent to one thousand rupees.

(2) Where any person is accused of an offence under sub-section (1), any digits or figures or signs or symbols or pictures or combinations of any two or more of such digits or figures or symbols or pictures in respect of which the offence is alleged to have been committed shall be presumed to relate to Worli Matkas gaming or some other form of gaming unless the contrary is proved by accused

By perusal of such provision, it would be apparent that it was an offence if someone prints, publishes digits, figures, symbols or pictures relating to Worli Matkas or other form of gaming. Actually for the present set of facts the trial court was expected to frame the charge of gambling done by the applicant whereas, the charge of section 4A of the Public Gambling Act was framed whereas, it was not a case of offence u/s 4A of the Public Gambling Act.

9. As discussed above, the Head Constable Shivbahadursingh could not prove any offence of gambling done by the applicant.

10. If it is considered that the applicant has committed an offence u/s 4A of the Public Gambling Act then it was for the Head Constable Shivbahadursingh to show that those seized satta slips were related to gaming or Worli Matkas and what was the meaning of such words and figures? By simple seizure of some slips on which numbers were written, then by such slips it cannot be said that those slips are published by the applicant in relating to Worli Matkas or any other form of gaming. Under such circumstances, the applicant could not be convicted for offence u/s 4A of the Public Gambling Act because it was not proved beyond doubt that he published digits, figures etc. relating to Worli Matkas or other from of gaming. It appears that the learned Magistrate as well as the learned Additional Sessions Judge did not go through the provisions of Section 4A of the (M.P. Amendment) Public Gambling Act before framing of the charges or preparation of the judgment.

11. On the basis of the aforesaid discussion the prosecution failed to prove that any stake of gambling was done by the applicant or he had published any paper of digits, figures etc. relating to Worli Matkas or other form of gambling and therefore, applicant cannot be convicted for offence u/s 4A of the Public Gambling Act. Under such circumstances, the revision filed by the applicant can be accepted and

consequently, it is hereby accepted. The conviction and sentence directed by both the Courts below are hereby set aside. The applicant is acquitted from all the charges appended against him. He would be entitled to get the fine amount back, if he has deposited the same.

12. The applicant has not claimed that a sum of Rs. 1108/- which was shown to be recovered from him and therefore, there is no need to interfere in the order of the trial Court relating to disposal of the seized property.

13. The applicant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

14. Copy of the order be sent to both the Courts below along with their records for information and compliance.