

**(2013) 08 CAL CK 0057****Calcutta High Court****Case No:** C.R.R. No. 2168 of 2011

Ranajit Das and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

**Date of Decision:** Aug. 14, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 482
- West Bengal Gambling and Prize Competitions Act, 1957 - Section 3, 4

**Hon'ble Judges:** Asim Kumar Mondal, J**Bench:** Single Bench**Advocate:** Arup Chatterjee and Mr. Chandra Shekhar Kabiraj, for the Appellant;**Final Decision:** Disposed Off**Judgement**

Asim Kumar Mondal, J.

This is an application u/s 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioners challenging the judgment and order dated 29th April, 2011 passed by Ld. Additional Chief Judicial Magistrate, Kakdwip, South 24-Parganas. In connection with G.R. Case No. 1055 of 2009 under Sections 3 and 4 of West Bengal Gambling and prize competition Act, 1957. The case of the petitioners is that Sub-Inspector of police attached with Kakdwip Police Station lodged a written complaint on 9th August, 2005 alleging that on the said day at about 20.40 hours he alongwith some other police personals conducted raid at the Fish Mill Office of one Pradip Paul and seized a huge amount of cash to the tune of Rupees one lakh fifty eight thousand and six hundred along with two sets of playing cards, candle sticks etc. and arrested the present petitioners along with the same other persons and produced them to the police station. On the basis of complaint police registered a case against the present petitioners and after completion of investigation submitted charge-sheet. Charge was framed accordingly and in course of trial two witnesses were examined on behalf of the State. Ld. Magistrate discharged the present petitioners from the Bail Bonds finding them as non-equity, but confiscated the

seized money of Rupees one lakh fifty eight thousand six hundred. The petitioners being aggrieved and dissatisfied the said order and judgment has preferred the present revisional application on the grounds that the petitioners were implicated in a false and fabricated case alleging gambling and seized money from them under threat.

2. That the petitioners were not examined by the Trial Court under the provision of Section 313 of the Criminal Procedure Code nor they were asked about the ownership of seized money of Rupees one lakh fifty eight thousand six hundred.

3. That the Ld. Trial Court neglected the claim of the petitioners about the ownership of money.

4. I have heard the Ld. Mr. Arun Chatterjee appearing on behalf of the petitioner. None appears on behalf of the State. The petitioners have annexed the photocopy of formal FIR, written complaint, forwarding report, seizure list. Petitioner have also annexed the Certified copy of the impugned judgment. On careful perusal of the said judgment and documents as annexed, it appears to me that as per written complaint Nanda Kishore Ghosh accompanied by other police personnel conducted raid at Fish Mill of Pradip Paul. The petitioners and others were found playing cards for gambling in lieu of money and huge amount was seized as Board money. In trial as it appears from the findings of Ld. Magistrate that prosecution failed to bring home charge against any of the accused persons including the present petitioners. Considering the evident on record and other materials, Ld. Magistrate concluded that the accused persons were entitled to get an order of acquittal. There is a clear observation and findings of the Ld. Magistrate in the impugned judgment. All the accused persons were examined u/s 313 of the Criminal Procedure Code and they have categorically stated that they are innocent. It is also observed

5. Curiously that the accused persons never admitted such amount was seized from their possession. On the other hand the accused persons did not claim their ownership over the seized articles.

6. In view of such findings, Ld. Magistrate ordered to confiscate the seized amounts to the tune of Rupees one lakh fifty eight thousand and six hundred to the State and order of destruction of other seized articles.

7. In my considered view the order of Ld. Magistrate is perfect and not suffer from any illegality or irregularity as alleged. The contention of the petitioners that in spite of their claim over the money seized by the police Ld. Court below did not consider the same even they were not examined u/s 313 Criminal Procedure Code and as such, they could not ventilate their grievances/claims. This contention is not acceptable to me. The petitioners have not filed any such document to establish that they were not examined u/s 313 of the Criminal Procedure Code or they put their positive suggestions to the witnesses examined in Court that the money were not seized from them in course of alleged raid by the police.

8. However, the petitioners have now come before this Court with a claim for return of the money as of their own on the ground that the prosecution has failed to bring home the charges against them. In such circumstances an enquiry is required to be held to ascertain the claim of the petitioners including their source of possessing such huge quantum of money specially where they have categorically denied that such amount was never seized from them. Therefore, the Criminal revision is disposed of with the following direction.

9. That the petitioners are at liberty to submit a prayer before the Ld. Additional Chief Judicial Magistrate at Kakdwip South 24-Parganas for returning the money confiscated to the State and the Additional Chief Judicial Magistrate at Kakdwip South 24-Parganas in that event will conduct an enquiry after giving opportunities to the petitioners to produce documents and evidences in support of their claim as well as after considering the materials available in the case record and to pass necessary orders in accordance with procedure and law. Urgent Photostat certified copy of this order if applied for be given to the parties on priority basis.