

(1954) 02 CAL CK 0019

Calcutta High Court

Case No: Criminal Revision Case No. 585 of 1953

Chun Lin Fu

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Feb. 25, 1954

Acts Referred:

- Calcutta Police Act, 1866 - Section 44

Citation: 58 CWN 419

Hon'ble Judges: Debabrata Mookerjee, J; Das Gupta, J

Bench: Division Bench

Advocate: K.P. Khaitan and Amal Chandra Roy, for the Appellant; J.M. Banerjee, for the State, for the Respondent

Judgement

1. This rule in our opinion must be made absolute. The petitioner is the President of the Chinese Buddhist Church and Club at 17, Black Burn Lane. Calcutta. On the 30th January, 1953. He applied to the Commissioner of Police, Calcutta, asking for leave to hold National Games, the proceeds of which will entirely be taken in the Church Fund, on the 10th/11th February, 1953, he addressed further letters to the Commissioner of Police explaining the nature of the games intended to be played adding that the games were only for the members of the Club. The Commissioner of Police replied stating that there was no objection to National Games being played but there should be no gambling. On the 15th February, 1953, when what are claimed to be National Games were in full swing a Police party raided the Club, arrested the petitioner and other members of the Club. They were tried for commission of offence under sections 44 and 45 of the Calcutta Police Act and convicted. The present petitioner was sentenced to a fine of Rs. 25, in default to rigorous imprisonment for 15 days u/s 44 of the Calcutta Police Act, while no separate sentence was passed u/s 45. Certain tables which had been seized from the Club were directed to be sold and the proceeds thereof to be credited to the Government. An amount of Rs. 972-12-0 which was also seized was forfeited.

2. The relevant portion of section 44 of the Calcutta Police Act for the purpose of this case provides that any person being the owner or occupier of a house who keeps or uses the same as a common gaming house shall be liable to punishment. Section 45 provides that whoever is found playing in any house which has been kept as a common game house "for the purpose of gaming. whether playing for any money, wager. stake or otherwise shall be liable" to punishment.

3. The first question for consideration, therefore, is whether on the 15th February, 1953, when the Police party arrived, the Club premises were being used as a common gaming house. The words "common gaming house" have been defined in section 3 of the Calcutta Police Act in these words:--

Common gaming house means any house, room, tent or walled enclosure or space, or vehicle, or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain for the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place or instruments or otherwise howsoever.

4. Quite clearly the mere fact that instruments of gaming were kept in the house will not mean that it is a common gaming house. An essential ingredient of the definition is that the instruments of gaming are kept or used there "for the profit or gain of the person owning, occupying, using or keeping such house". Mr. Khaitan has contended that there is no evidence at all to justify the conclusion that the instruments of gaming, if any that were in the club on that night were kept there for the profit or gain of the present petitioner or any other person who might be said to be owning or occupying the house. The mere fact that something was expected to be made from the members of the club as the result of the use of instruments of gaming will not justify the conclusion that they were kept for the profit or gain of the present owner. Indeed, if the mere fact of keeping the instruments of gaming would have justified the conclusion that they must be for the profit of the person owning the house there would have been no need for the legislature to put the words "used for the profit or gain of the person owning, occupying, using or keeping such house." The Legislature clearly contemplated a case where instruments of gaming might be kept and used and thus money made, which might not be for the profit or gain of the person keeping the house, but the profit or gain of some other person or body of persons. The petitioner's conduct in writing to the Commissioner of Police on the 30th January, 1953, and asking for permission to play the National Games in which the definite plea was made that the proceeds of games were intended to be used for the Church Fund cannot be ignored. In our judgment there is not only nothing to show that the instruments of gaming which might have been kept in the house were kept for the profit or gain of the person owning or occupying the house, but there is definite indication on the record to show that it was not for such a purpose, but for the purpose of benefiting Church Fund. In our judgment this

finding is sufficient for the conclusion that the Club was not being Kept or used as a common gaming house on the 15th February, 1953.

5. Mention may be made in this connection of the/ decision of a Full Bench of this Court in the case of The Superintendent and Remembrancer of Legal Affairs, Bengal v. D. E. Wilson (1) (51 C.W.N. 804) wherein the learned Judges made the following observations :--

It seems to us clear that the Legislature without interfering with ordinary gambling among friends, sought to prevent otherwise than at the places and times mentioned in the exception in the definition of gambling people making a business of gambling, and attracting others with the hope of making a profit out of them.

6. Mr. Khaitan has pointed out that there was no suggestion that any body except the members of the Club were in the Club at the time of the Police-raid and that the gambling, if any, was really among friends. The evidence on the record justifies the conclusion that the gambling, if any, was really confined to friends. On the authority of the view of the Full Bench, therefore, we are bound to hold that the Club was not being used as a common gaming house.

7. The conviction of the petitioner cannot, therefore, be sustained in law. We, therefore, set aside the order of conviction and sentence passed against him. We also set aside the order of forfeiture of the money that WaS seized. We also order that the articles seized be returned to the Club and direct that this money as well as the other articles that were seized from the Club be returned to the Club The fine, if paid, will be refunded.