

**The High Court Of Judicature At Allahabad**

**Sitting At Lucknow**

Neutral Citation No. - 2024:AHC-LKO:21388

**A.F.R.**

**Court No. - 27**

**Case :-** CRIMINAL REVISION No. - 1021 of 2023

**Revisionist :-** Rasheed Ahmed

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home, Lko.

**Counsel for Revisionist :-** Amit Chaudhary, Mahendra Kumar Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Subhash Vidyarthi J.**

1. By means of the instant criminal revision filed under Section 397/401 Cr.P.C. the revisionist has challenged the validity of the judgment and order dated 05.11.2020, passed by the learned Chief Judicial Magistrate, Faizabad in Criminal Case No.11109 of 2018 arising out of Case Crime No.52 of 2018, under Section 13 of the Gambling Act, Police Station Kotwali Rudauli, District Faizabad, whereby the revisionist has been convicted for the aforesaid offence on the basis of his confession and has been sentenced to pay a fine of Rs.100/- and to remain in custody till the rising of the Court, only to the extent that it denies the benefit of Probation of Offenders Act, 1958 to the revisionist.
2. Sri. Amit Chaudhry, the learned counsel for the revisionist has submitted that the revisionist has no criminal history and, therefore, he was entitled to be granted benefit of provisions of Section 4 of the Probation of Offenders Act, 1958 (hereinafter referred to as the 'Act of 1958'). In that case the revisionist would be entitled to the benefit of Section 12 of the Act, 1958, which provides that a person found guilty of the offence and dealt with under the provisions of Section

3/4 of the Act, 1958 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

3. The learned counsel for the revisionist has submitted that Section 361 Cr.P.C. provides that whether a court could have dealt with an accused person under the provisions of Section 360 Cr.P.C. or provisions of Act, 1958, but it has not done so, it shall record in its judgment the special reasons for not having done so, whereas no reason has been recorded in the impugned order for denial of benefit of Section 4 of the Act, 1958 to the revisionist.
4. *Per contra*, the learned A.G.A. – I has submitted that Section 4 of the Act of 1958 merely provides for release of the offender on probation of good conduct, but it does not provide for setting aside his conviction.
5. In reply to this submission of the learned A.G.A.-I, the learned Counsel for the revisionist has submitted that Section 12 of the Act of 1958 provides that a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer any disqualification attaching to a conviction of an offence under such law. Therefore, he confines his submission for the revisionist being granted the benefit of Section 4 of the Act of 1958, which would result in removal of the disqualification attached with the applicant being guilty of committing an offence.
6. Having heard the submissions of the learned Counsel for the revisionist and the learned A.G.A.-I, I proceeded to peruse the record of the case. In the memo of the revision, the validity of the order of sentence has also been challenged on the ground that the fine imposed by the trial Court exceeds the maximum fine of Rs.50/- permissible under Section 13 of the Public Gambling Act.
7. Section 13 of the Public Gambling Act, 1867 provides as follows: -

***“13. Gaming and setting birds and animals to fight in public streets.—A police-officer may apprehend without warrant—any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in***

*playing any game not being a game of mere skill in any public street, place or thoroughfare situated within the limits aforesaid, or*

*any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or*

*any person there present aiding and abetting such public fighting of birds and animals.*

*Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;*

***Destruction of instruments of gaming found in public streets.—***  
*Any such police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed.”*

8. The provisions of Section 13 have been amended in their application to the State of U.P. by U. P. Act No. 21 of 1961 and Section 13 of the Gambling Act 1867, as it applies to the State of Uttar Pradesh, provides as follows: -

***“13. Gaming and setting birds and animals to fight in public streets.—****A police-officer may apprehend without warrant—any person found gaming in any public street, place or thoroughfare situated within the limits aforesaid, or*

*any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or*

*any person found in any public street, place or thoroughfare within the limits aforesaid with any instruments of gaming; or;*

*or any person there present making preparation for or aiding or abetting such gaming or public fighting of birds or animals.*

*Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable - in the case of a first offence to a fine not exceeding two hundred and fifty rupees nor less than fifty rupees; or to rigorous imprisonment for a term not exceeding one month; and*

*in the case of any subsequent offence to a fine not exceeding five hundred rupees nor less than one hundred rupees and rigorous imprisonment for a term not exceeding six months nor less than one month.*

***Destruction of instruments of gaming found in public streets.—***  
*Any such police-officer may seize all instruments of gaming*

*found in such public place or on the person of those whom he shall so arrest, and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed.”*

9. The maximum fine that can be imposed under Section 13 of the Gambling Act for an offence committed in the State of Uttar Pradesh, is Rs.250/-. Therefore, the fine of Rs.100/- imposed on the revisionist does not exceed the maximum permissible limit of fine.
10. However, the conviction and the sentence imposed appear to be illegal for other reasons which are being stated hereinbelow.
11. The impugned judgment does not contain any narration of the prosecution case and it has held the revisionist guilty merely on his admission.
12. The present matter arose from F.I.R. No. 50 of 2018 lodged by a Sub-Inspector of Police in Police Station Kotwali Rudauli, District Barabanki, on 09.02.2018 at 20:30 hours, alleging that upon receiving information from a *Mukhbir* (informer), that some persons were gambling inside a hut in the grove of one Anjum, a police team reached there and found that four persons, including the revisionist, were playing a game of cards involving gambling. All the four persons were arrested on the spot. Rs.1,400/- were recovered from the revisionist, Rs.1,000/- were recovered from Mohammad Shafeeq, Rs.800/- were recovered from Mohammad Abid and Rs.1,200/- were recovered from Salauddeen. 52 playing cards and Rs.1,900/- were recovered from a polythene sheet laid there. Although several persons had gathered there, no person witnessed the recovery.
13. As per the entry made in the General Diary of the police station, the accused persons were arrested at 18:30 p.m. on 09.02.2018, they were lodged in the lock-up at 20:29 hours on 09.02.2018. The revisionist was released on bail at 08:17 hours on 10.02.2018.
14. A charge-sheet was submitted on 14.03.2018 stating that from the statement of the complainant, statement of the witnesses, spot inspection and the recovery made, offence under Section 13 of the Public Gambling Act, 1867 is established against all the accused

persons. However, no statement recorded by the Investigating Officer has been annexed with the charge-sheet.

15. The trial Court took cognizance of the offence by means of an order dated 15.06.2018 on a printed proforma stating that the Court perused all the prosecution documents and there was sufficient ground to take cognizance of the offence.
16. Section 13 of the Public Gambling Act provides that “*A police-officer may apprehend without warrant—any person found gaming in any public street, place or thoroughfare situated within the limits aforesaid..*” The F.I.R. in the present case stated that the accused persons were gambling inside a hut situated in the grove on one Anjum, which was not a public street, place or thoroughfare situated within the limits of any public place. Therefore, from the allegations made in the F.I.R. itself, the offence under Section 13 of the Public Gambling Act, 1867 is not made out. The Investigating Officer has not carried out any investigation and he has submitted a charge-sheet in a mechanical manner.
17. The Trial Court also did not apply his mind to record a prima facie satisfaction as to whether the alleged offence was made out even if the F.I.R. allegations were assumed to be true and passed the order taking cognizance of the offence and summoning the accused persons, by filling up the names of the accused persons and other particulars on a printed proforma, which practice has been deprecated by the Superior Courts time and again.
18. The revisionist appeared before the trial Court on 05.11.2020 and he filed an application stating that he is a poor person and he is unable to contest the case. For this reason, he stated that he wanted to get the case disposed off on the basis of his confession and it would be in the interest of justice that the case be disposed off by imposing the minimum fine against him.
19. In the impugned order dated 05.11.2020, the trial Court has recorded the aforesaid fact and has held the revisionist guilty on the basis of his

confession. Such a confession made because of the compelling circumstance of the accused being unable to contest the case because of his poverty, is no confession in the eyes of law, particularly when the Court itself had not cared to examine that even if the prosecution allegations were taken to be true, the offence under Section 13 of the Public Gambling Act 1867 was not made out against the revisionist.

20. The sentence order records the submission of the revisionist that he was a poor and destitute person and he was accordingly sentenced to pay a fine of Rs.100/- and to remain in custody till the rising of the Court. The revisionist had already been in custody for a period since 18:30 p.m. on 09.02.2018 till 08:17 hours on 10.02.2018 of about 2 years.
21. An offence under Section 13 committed in the State of Uttar Pradesh carries a maximum punishment of fine of an amount between Rs.50/- and Rs.250/- or imprisonment for a maximum period of one month. The trial Court could not have punished the revisionist with fine and imprisonment both.
22. The Courts are always under an obligation to ensure that no injustice is caused to any person and that no person is denied the Fundamental Right of equal protection of laws. When an accused person makes a confession for the reason that he is unable to defend the prosecution case because of his poverty and destituteness, the Court's duty to ensure that no injustice is caused to him and the equal protection of the laws is not denied to him, becomes even more onerous. The Court must consider whether the allegation against the accused make out a case for his conviction and sentence and whether the accused has made the confession after understanding the nature of allegation made against him and after understanding its consequences.
23. In view of the aforesaid discussion, the order of conviction and sentence imposed upon the revisionist on the basis of his confession only, when the offence is not made out even if the prosecution case is

accepted to be true, is unsustainable in law and the same deserves to be set aside.

24. Accordingly, the revision is allowed and the judgment and order dated 05.11.2020, passed by the learned Chief Judicial Magistrate, Faizabad in Criminal Case No.11109 of 2018 arising out of Case Crime No.52 of 2018, under Section 13 of the Gambling Act, Police Station Kotwali Rudauli, District Faizabad, whereby the revisionist has been convicted for the aforesaid offence on the basis of his confession and has been sentenced to pay a fine of Rs.100/- and to remain in custody till the rising of the Court, is hereby set aside and the revisionist is acquitted of the charges.

**(Subhash Vidyarthi J.)**

**Order Date : 11.03.2024**

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