

IN THE COURT OF SH. KAPIL KUMAR  
METROPOLITAN MAGISTRATE-05, CENTRAL,  
TIS HAZARI COURTS, DELHI

CNR No. DL CT02-008724-2019  
CIS No. 4284/19  
State Vs. Naresh Mehra & Ors .  
FIR No. 123/18  
PS. Nabi Karim  
U/s. 12 of Gambling Act

JUDGMENT

- 1) The date of commission of offence : 10.04.2018
- 2) The name of the complainant : ASI Radhey Shyam
- 3) The name & parentage of accused persons : **1) Naresh Mehra**  
S/o. Marchand Mehra  
R/o. H. No. C-256 Gali no.10,  
Chinnot Basti, Nabi Karim,  
Delhi.  
**2) Munna Kumar**  
S/o. Ved Chandra Parve  
R/o. H. No. C-143 Gali no.10,  
Chinnot Basti, Nabi Karim,  
Delhi.  
**3) Rijwan**  
S/o. Tahir Mahrum  
R/o. H. no. 2208, Chunna Mandi,  
Paharganj, Delhi.
- 4) Offence complained of : u/s. 12 of Gambling Act
- 5) The plea of accused persons : Pleaded not guilty
- 6) Final order : Acquitted
- 7) The date of such order : 14.05.2020
- Date of Institution : 27.03.2019  
Judgment announced on : 14.05.2020



**BRIEF REASONS FOR THE JUDGMENT:**

- 1) The case of the prosecution against the accused persons is that on 10.04.2018, at about 12:45 PM, near House no. 243 C, Gali no. 10, Chinnot Basti, Nabi Karim, Delhi, they were found gambling at public place.
- 2) After investigation, charge-sheet was filed against the accused persons. The copy of charge-sheet was supplied to the accused persons in compliance of Section 207 Cr. P.C. Thereafter, notice was served upon the accused persons for the offence under Section 12 of Gambling Act to which they pleaded not guilty and claimed trial.
- 3) In support of its version, prosecution has examined six witnesses. After conclusion of prosecution evidence, statement of accused persons were recorded separately wherein accused persons claimed to be innocent and denied the allegations against them. Accused persons opted not to lead any DE.
- 4) I have heard Ld. APP for State and Ld. Counsel for accused persons. I have perused the record.
- 5) The testimonies of prosecution witnesses are hereby discussed, in brief, as follows:-
  - 5.1) PW1 ASI Radhey Shyam and PW4 Constable Manoj Kumar deposed on the same lines that on 10.04.2018, they were on patrolling duty in the area and when they reached near Prem Nagar, Kuda Khatta, Nabi Karim, Delhi, one secret informer met them, who informed them that some persons were playing satta with chits at House no. C-243, Chinnot Basti, Gali no.10, Nabi Karim, Delhi. Public persons were asked to join proceedings but none agreed. Raiding party was constituted comprising of themselves and secret informer and they reached near house no. C-243, Chinnot Basti, Nabi Karim, Delhi. Constable Manoj was given the role of decoy customer and a currency note of Rs 20/, mentioning the sign of 'RS' was handed over to him and the direction was given

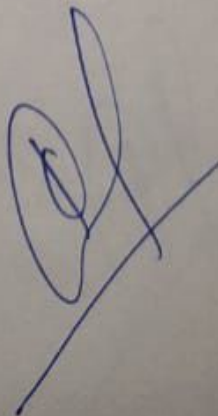


that after finalization of the deal, signal be given by hurling hand over the head. Constable Manoj Kumar fixed the deal and after handing over of currency note of Rs 20/- to the accused he gave signal. Thereafter, ASI Radhey Shyam along with secret informed also reached there and all the accused persons were apprehended. Upon the search of accused Naresh Mehra Rs 11,620/- were recovered from his possession, upon search of accused Rijwan of Rs 14,300/- and parchies mentioning serial no. 1 to 5 were recovered and upon search of accused Munna Rs 7,600/- and one parchi mentioning serial no. 27 were recovered. All the recovered articles and currency note of Rs 20/- which was given to Ct Manoj, were sealed with the seal of RS and seized vide seizure memo Ex. PW1/A, tehir ExPW1/B was prepared. The seal was handed over to Ct Manoj after putting the same on the case property. FIR was registered through Ct Manoj and HC Balwan came at the same spot to whom the further investigation was marked. Case property along with the documents and the custody of accused persons were handed over to HC Balwan. HC Balwan prepared the site plan. The case property was proved as Ex.P1 to Ex.P4 (Colly). They correctly identified the accused persons in the court.

5.2) PW2 HC Rajesh Kumar proved endorsement on rukka as Ex.PW2/A, copy of FIR as Ex.PW2/B and certificate U/s 65 B Indian Evidence Act as Ex.PW2/C.

5.3) PW3 HC Rajender Singh deposed that on 02.02.2019, further investigation was handed over to him. He prepared the charge-sheet and filed the same in the court.

5.4) PW5 HC Ravikant deposed that on 11.04.2018 ASI Radhey Shyam deposit the case property in the malkhana of PS Nabi Karim for which he made at entry at serial no. 1227/2018 in register no.19 and proved the same as Ex.PW5/A.

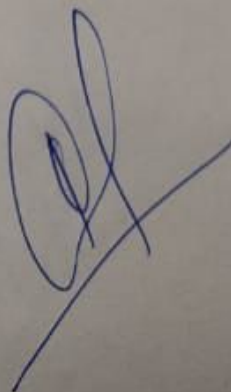


5.5) PW6 HC Balwan deposed that on 11.04.2018, further investigation of the present case was handed over to him and thereafter he along with Ct Manoj went to the spot along with original rukka and copy of FIR. He deposed that the custody of accused persons and two sealed pullandas were handed over to him by ASI Radhey Shyam. He deposed that he was apprised of the entire facts and thereafter he prepared the site plan Ex.PW4/A. He deposed that accused persons were arrested vide memos Ex.PW4/B, Ex.PW4/C and Ex.PW4/D and personally searched vide memos Ex.PW4/E, Ex.PW4/F and Ex.PW4/G. Statement of witnesses were recorded. Charge-sheet was filed after completion of investigation. He correctly identified the accused persons.

6) It is the cardinal principle of Criminal Justice delivery system that the prosecution has to prove the guilt of accused person beyond reasonable doubts. No matter how weak the defence of accused is but, the golden rule of the Criminal Jurisprudence is that the case of the prosecution has to stand on its own leg.

7) Now, I consider the points contended by the Ld. Counsel for the accused. Ld. Counsel for accused argued that no independent witness was joined in the investigation. First of all, I consider the legal position on this point. In **State of Punjab v. Balbir Singh**, AIR 1994 SC 1872, the Hon'ble Supreme Court held that:

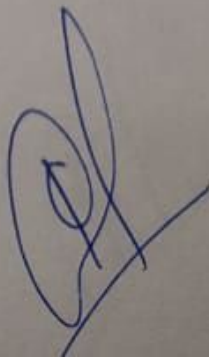
It therefore emerges that non-compliance of these provisions i.e. Sections 100 and 165 Cr.P.C. would amount to an irregularity and the effect of the same on the main case depends upon the facts and circumstances of each case. Of course, in such a situation, the court has to consider whether any prejudice has been caused to the accused and also examine the evidence in respect of search in the light of the fact that these provisions have not been complied with and further consider whether the weight of evidence is in any manner affected because of the non-compliance. It is well-settled that the testimony



of a witness is not to be doubted or discarded merely on the ground that he happens to be an official **but as a rule of caution and depending upon the circumstances of the case, the courts look for independent corroboration.** This again depends on question whether the official has deliberately failed to comply with these provisions or failure was due to lack of time and opportunity to associate some independent witnesses with the search and strictly comply with these provisions. [Emphasis supplied]

Considering facts and circumstances of the present case, there was no lack of time and opportunity to associate some independent witnesses with the search and strictly comply with the provisions of Code of Criminal Procedure. Merely mentioning that public persons were requested to join the investigation is of no avail. Name of those persons are not mentioned. It is not mentioned as to what action was taken against those persons who refused to join the investigation. Hence, this creates doubt on the case of the prosecution.

- 8) If the accused persons were found gambling at the public place than there must have been persons who were investing money with the accused persons. The prosecution has not been able to call any of those persons as prosecution witnesses. This is the void in the case of the prosecution and is a material one.
- 9) As per the case of the prosecution, after receiving of secret information, Ct Manoj was given the role of decoy customer and was handed over a currency note of Rs 20/-. There is no handing over memo of currency note on record. The first IO ASI Radhey Shyam was required to prepare handing over memo thereby mentioning the serial number of that currency note and the alleged fact that the currency note was signed by him. This important document is not on record.



10) It was deposed by ASI Radhey Shyam that he handed over the currency note of Rs 20/- bearing a sign of 'RS' to Ct Manoj (PW4). Same is the testimony of PW4. Both these witnesses deposed in the cross examination currency note which was shown to them i.e Ex.P4 (brought by MHC(M)) does not bear any sign. This reveals that the currency note brought by the MHC(M) was not same which was handed over as Ex.P4. This leads to inference as to the tempering in the case persons and accused persons entitle to have benefit of this fact.

11) Further, the seal after use was not handed over to any independent person. Seal after use was handed over to Ct Manoj only. It appears that no efforts was made to hand over the seal after use to independent person. I am conscious of precedent laid down by Hon'ble Delhi High Court in **Safiullah v. State, 1993 (1) RCR (Criminal) 622**, that:

“10. The seals after use were kept by the police officials themselves. Therefore the possibility of tampering with the contents of the sealed parcel cannot be ruled out. It was very essential for the prosecution to have established from stage to stage the fact that the sample was not tampered with. .... Once a doubt is created in the preservation of the sample the benefit of the same should go to the accused.”

Hon'ble Punjab & Haryana High Court also held in **Ramji Singh v. State of Haryana, 2007 (3) RCR (Criminal) 452**, that

“7. The very purpose of giving seal to an independent person is to avoid tampering of the case property.”

There was the space for tempering of the case property as the case property was lying in the same malkhana where the raiding party member were posted. Hence, considering the legal position, the benefit of doubt should be given to the accused persons.

12) Besides all this, in the present case, the seizure memo Ex.PW1/A bears the number of FIR. As per the rukka and testimony of witnesses the seizure

memos of the case property was prepared prior to registration of FIR. If that be so then how Ex. PW1/A bears the FIR number. Now, I consider the observation made by Hon'ble Delhi High Court in **Giri Raj v. State**, 83 (2000) DLT 201. This gives rise to two inferences that either the FIR was recorded prior to the alleged recovery of the case property or number of the said FIR was inserted in the document after its registration. In both the situations, it seriously reflects upon the veracity of the prosecution version and creates a good deal of doubt about the recovery of the case property in the manner alleged by the prosecution. That being so, the benefit arising out of such a situation must necessarily go to the accused persons.

13) It is alleged that paper slips along with pen was recovered from the possession of accused persons in which some number/digits were mentioned. It was argued by Ld APP for the State that the accused persons used to write down the numbers on the paper slip and on the basis of those numbers the gambling used to be done. If that be so than paper slips recovered from the possession of accused persons must have been sent to FSL for comparison with the admitted handwriting of accused persons. In the criminal trial nothing is to be assumed. It cannot be assumed that the paper slips were having the handwriting of accused persons. This alleged fact was required to be proved by the prosecution specifically by leading positive evidences which could have been an opinion of the handwriting expert in the facts of the present case. Nothing of this sort was done by the IO for the reasons best known to him. This creates a gaping hole in the case of the prosecution and accused persons are entitled to have benefit of the same.

14) Vide testimony of PW5 it is on record that the case property was deposited in malkhana by ASI Radhey Shyam and not by second IO HC Balwan. ASI Radhey Shyam PW1 that he left the spot after handing over the custody of accused persons and the case property to HC Balwan. If ASI Radhy

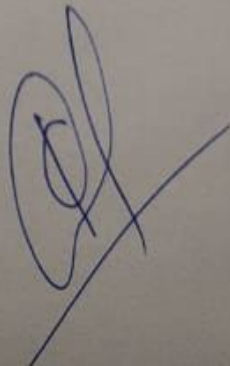


Shyam had already surrendered the custody of the case property than how it is possible that the case property was deposited by ASI Radhey Shyam in the malkhana of the police station. This clearly reveals that the entire paper proceedings done by the second IO is not reliable and all the documents are under cloud of doubt. The entire proceedings proved to be sham and no reliance could be placed upon the documents prepared during the investigation.

15) In the judgment titled as "**S.L.Goswami v. State of M.P**" reported as **1972 C.R.L.J.511(SC)** the Hon'ble Supreme Court held:-

*"..... In our view, the onus to proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible or is palpably false that burden does not become any the less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case, which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution....."*

16) The onus and duty to prove the case against the accused was upon the prosecution and the prosecution must establish the charge beyond reasonable doubt. It is also a cardinal principle of criminal jurisprudence that if there is a reasonable doubt with regard to the guilt of the accused the accused is entitled

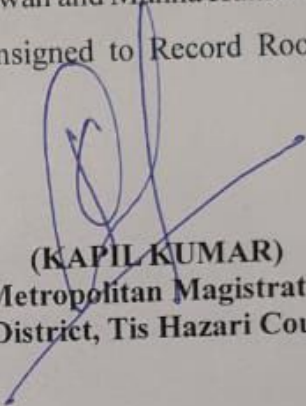




to benefit of doubt resulting in acquittal of the accused. Reference may also be made to the judgment titled as **Nallapati Sivaiah v. Sub Divisional Officer, Guntur reported as VIII(2007) SLT 454(SC)**.

17) In view of above said discussion, the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubts. Accordingly, I hereby acquit accused persons Naresh Mehra, Rijwan and Munna Kumar of the charges framed in the present case. File be consigned to Record Room subject to compliance of section 437A Cr.PC.

**Announced in the open court  
on 14.05.2020**

  
**(KAPIL KUMAR)**  
**Metropolitan Magistrate-05**  
**Central District, Tis Hazari Courts/Delhi**

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U/s. 12 of Gambling Act

14.05.2020

(Through VC)

File was pre-ponned in view of circular of the Ld District & Sessions Judge (HQ), reference no. 8188-8348/DJ/Covid 19, Lockdown pronouncements/2020, dated 03.05.2020.

Present: Ld APP for the State.

All accused persons are present with counsel.

An application for cancellation of proceedings U/s 82/83 Cr.PC has been moved on behalf of accused Rijwan. Heard. Considering the pandemic Covid19 situation, the proceedings under section 82/83 Cr.PC are hereby stands canceled.

Matter was fixed for judgment earlier.

Records perused.

Vide separate judgment of even date, accused persons Rijwan, Naresh Mehra and Munna Kumar are hereby acquitted from the present case.

The soft copy of the judgment has been provided to the computer branch for necessary uploading the same on CIS.

It is to be noted that digital signature of undersigned has been expired for which the necessary intimation has alrerady been sent to the computer branch.

Section 437A Cr.PC complied with.

File be consigned to Record Room after due compliance.

(KAPIL KUMAR)

MM-05/Central:

Delhi/14.05.2020