

Madan Mohan Lal vs The State on 7 January, 1952

Equivalent citations: AIR1953ALL463, AIR 1953 ALLAHABAD 463

ORDER

Beg, J.

1. This is a reference by the learned Sessions Judge of Lucknow recommending that, the order of forfeiture of the alleged "nal" and "phar" money and the destruction of other articles recovered during the search passed by the Sub-Divisional Magistrate, Mohanlalganj, Lucknow (Sri p. D. Joshi) on April 2, 1951, beset aside. One Madan Mohan Lal was prosecuted under Sections 3 & 4 of the Public Gambling Act. The learned Sub-Divisional Magistrate, Mohanlalganj, Lucknow tried the case and acquitted him of the offences with which he was charged. In spite of the order of acquittal he directed the forfeiture of the alleged "nal" money kept in a cigarette tin & "phar" money found on the spot as well as the destruction of the articles recovered during the search by the police. The accused Madan Mohan Lal went up in revision before the learned Sessions Judge of Lucknow, who has made this reference with the above mentioned recommendation.

2. I have read the order of reference as well as the explanation submitted by the learned Magistrate and am of opinion that this, reference must be accepted. The order of forfeiture of the money and the destruction of the articles is passed under Section 8 of the Public Gambling Act (III of 1867). The said section reads as follows:

"On conviction of any person for keeping or using any such common gaming house, or-being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled."

A perusal of the above section clearly indicates that before the Court can exercise its jurisdiction to pass order of forfeiture of money or destruction of property it is necessary that the accused must be convicted of the offence with which he is charged. His conviction is therefore, a condition precedent to any such order. This being a penal enactment must be construed strictly and in the case of acquittal of the accused the Court has no power to pass an order of forfeiture or destruction as mentioned in Section 8. I accordingly accept the recommendation in the reference and set aside the order of the trial Court directing the forfeiture of the alleged "nal" and "phar" money and the destruction of articles recovered during the search.