

Emperor Vs. Appa Ganpat

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Court : Mumbai

Decided On : Jun-27-1935

Reported in : AIR1935Bom399; (1935)37BOMLR656; 159Ind.Cas.176

Judge : Broomfield and ;Mocklin, JJ.

Appeal No. : Criminal Application for Revision No. 77 of 1935

Appellant : Emperor

Respondent : Appa Ganpat

Judgement :

Broomfield, J.

1. This application raises a point as to the construction of Section 4 of the Bombay Prevention of Gambling Act, IV of 1887. That section runs as follows :-

Whoever-

(a) being the owner or occupier or having the use of any house, room or place, opens, keeps or uses the same for the purpose of a common gaming-house,

(b) being the owner or occupier of any such house, room or place knowingly or wilfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid,

(c) has the care or management of, or in any manner assists in conducting the business of, any such house, room or place opened, occupied, kept or used for the purpose aforesaid.

(d) advances or furnishes money for the purpose of gaming with persons frequenting any such house, room or place, shall be punished

(a) for a first offence with imprisonment which may extend to, three months or with fine which may extend to five hundred rupees;

(b) for a second offence with imprisonment which may extend to six months and in the absence of special reasons to the contrary to be mentioned in the judgment of the court, shall not be less than seven days either with or without fine which may extend to one thousand rupees ; and

(c) for a third or subsequent offence with imprisonment which may extend to ' six months and, in the absence of special reasons to the contrary to be mentioned in the judgment of the court, shall not be less than one month, together with fine which may extend to one thousand rupees.

2. The question which the learned Government Pleader, who makes the application, asks us to consider is whether a person who is convicted under any of the clauses (a), (b), (c) or (d) of the definitive part of the section is liable to enhanced punishment as provided in the penal clauses if he has been previously convicted of an offence or offences under any other clause of the definition, or whether in order to render him liable to enhanced punishment the convictions must have been under the same clause. The actual facts of the case are that the accused Appa Ganpat has been convicted of offences under Section 5 and Section 4 (a) of the Act. There was as a matter of fact also a charge under Section 4 (c) but the learned Magistrate did not convict him under that, holding it to be redundant. A list of previous convictions was put in purporting to show that the accused had been twice previously convicted of an offence under Section 4 (c). There was a third previous conviction alleged under Section 4 but the particular clause, whether (a), (b), (c), or (d), was not specified. The learned Magistrate took the view that as it appeared that the offences under Sections 5 and 4 (a) had been

committed by the accused for the first time he was not liable to enhanced punishment as provided at the end of Section 4, and he therefore sentenced him to pay a fine of Rs. 200 with one month's rigorous imprisonment in default. If the penal clause of Section 4 relating to second or subsequent offences applied then it would have been obligatory on the Court to impose a sentence -of at least one month's imprisonment in addition to fine. The learned Government Pleader contends that the learned Presidency Magistrate has misconstrued the section and that on a true construction of it a sentence, of imprisonment not less than one month ought to have been imposed.

3. In our opinion the contention of the learned Government Pleader is obviously right. In Section 4 we have not an enumeration of four distinct offences but a definition of one offence, which is generally described in the margin as 'keeping 'Common gaming house', by reference to four variations of it. According to the ordinary use of language, 'offence' as used in the penal part of the section must mean an offence under any clause of the definition. So far as we can see, there is really nothing to be said in favour of the other view. The learned advocate who appears on behalf of the accused has urged that the Legislature might appropriately have used some such language as this ; 'if convicted of any of the offences for the first time,' or 'shall be punished for a first offence under (a), (b), (c),or (d).' We think, however, that there was no necessity for making clearer what is already sufficiently clear. The view which apparently appealed to the learned Magistrate seems to us to be contrary to commonsense.

4. That being so, if the previous convictions had been properly proved, it would have been necessary for us to impose a sentence of imprisonment, because, although we have allowed the learned advocate for the accused to argue the case on the merits, we can see no good reason for differing from the learned Magistrate as to the sufficiency of the evidence. But the record does not show either that the accused admitted the previous convictions or that legal evidence of them was adduced. We cannot, therefore, take them into account. This. is less unfortunate than it otherwise would have been seeing that a considerable time has now elapsed since the conviction of the accused. Beyond, therefore, stating our view of the law we make no order on the application and leave the sentence as it is.

