

Emperor Vs. Vallibhai Ibrahim

Emperor Vs. Vallibhai Ibrahim

SooperKanoon Citation : sooperkanoon.com/336938

Court : Mumbai

Decided On : Aug-03-1932

Reported in : (1932)34BOMLR1447

Judge : John Beaumont, Kt., C.J. and ;Nanavati, J.

Appeal No. : Criminal Revision No. 179 of 1932

Appellant : Emperor

Respondent : Vallibhai Ibrahim

Judgement :

Jhon Beaumont, Kt., C.J.

1. This is an application in revision in which the accused persons ask us to set aside their convictions under the Bombay Prevention of Gambling Act No. IV of 1887. The learned Magistrate held that the burden was upon the accused to prove their innocence, relying upon the presumption against the accused which is raised by Section 7 of the Act. Now the learned Magistrate was quite right in raising that presumption if the premises of the accused had been searched under a warrant lawfully issued under Section 6 of the Act, but the presumption under Section 7 does not arise unless there has been a proper search warrant under Section 6. It is said that the warrant of search purported to be issued in this case under Section 6 is invalid on two grounds. In the first place it is said that the warrant, although it states that a complaint on oath has been made, does not state that the Assistant

Superintendent of Police who issued the warrant had reason to suspect that the house in question was used as a common gaming house, that is to say, that the warrant does not show on the face of it that the conditions precedent under Section 6 have been complied with. In my opinion there is no validity in the objection. It is, I think, usually desirable that a warrant issued under the terms of a particular statute should show on its face that the conditions precedent required by the statute have been complied with, but it is not in my view essential that the warrant should so show. There is a presumption under Section 114, ill. (e), of the Indian Evidence Act, which enables us to presume that the officer issuing the warrant has performed his duty correctly, and until that presumption is displaced, it is not, in my opinion, necessary for the officer to give any evidence in the matter. In point of fact merely stating on the warrant that particular things have been done would not afford any evidence that those things had been done.

2. The other point taken is that the warrant incorrectly describes the house searched. The warrant recites that a complaint on oath has been made that a house situate in census Nos. 4082 and 4083 in Kalupur Motimakeriwad and which is occupied by one Valibhai Ibrahim (who is the first accused) is used as a common gaming house. Now, in point of fact the two census numbers which were searched were census numbers 1021 and 4082. It appears that on the first floor of this house are census numbers 1021 and 4082, and on the ground floor are Nos. 1022 and 4083; and the warrant was intended to apply to the first floor, that is to say, 1021 and 4082, which are proved to be in the occupation of accused No. 1. It is, I think, clear on the authorities which Mr. Thakor has cited that if the warrant wrongly described the property to be searched, then it is a bad warrant. But a description may be good in part and bad in part, and it may be possible for the Court to reject the bad part on the principle of *falsa demonstratio non nocet*. The learned Government Pleader suggests that we can do that here. He says that the property is described as census numbers 4082 and 4033 occupied by accused No. 1, and he says that the governing part of the description is the statement of the occupation of the premises by accused No. 1, but I do not take that view. It is proved that No. 1021, which was the particular room in which the gaming instruments were found, is occupied by accused No. 1, but it is not proved that he does not occupy other numbers in the street, and it is not proved that he does not

occupy 4082, It is not, therefore, proved that the description 4082 and 4083 occupied by accused No. 1 is an inaccurate description of any premises, and until it is shown that the description used is inaccurate in part no case for applying the maxim falsa demonstratio non nocet arises. I think, therefore, we have got here a warrant which incorrectly describes the premises to be searched and therefore the search of the room No. 1021, which is not included in the warrant, is not a search in respect of which any presumption can arise under Section 7 of the Act. That being so, I think the learned Magistrate was in error in putting the burden of proof upon the accused, and I think the conviction must be set aside.

Nanavati, J.

3. I agree.

4. Per Curiam, Convictions and sentences set aside. Fines to be repaid. Rs. 17 to be returned to accused No. 1.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com