

Nathu Mal Vs. Emperor

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Court : Allahabad

Decided On : Jan-07-1925

Reported in : AIR1925All309

Appellant : Nathu Mal

Respondent : Emperor

Judgement :

Mukerji, J.

1. These are twelve applications in revision against the applicants' conviction under Section 3 of the Public Gambling Act of 1867.
2. The whole question to be determined in these petitions is whether the applicants were keeping what may be styled as a 'common gaming house.'
3. The facts found are these. There is an enclosure or 'barah' belonging to a firm Piru Mal Radha Baman. It was let out to three persons, Gopal Das, Mul Chand and Nathu Mal who are among the applicants. They, in their turn, sub-let the premises to other people so that there were 31 compartments in all. In all these 31 compartments gambling was going on when the police made a raid. The following method was pursued in this particular gambling. The person occupying a booth had some receipt books and sheets of papers. These were undoubtedly instruments of gambling in these cases. A customer came and he said that he

would bet so much against so much, if a particular figure formed one of the two last digits of the average price at which opium was sold by auction in Calcutta. The gambling was held on the day the auction sale was held in Calcutta and on this particular occasion the figures were 1 and 4. A telegram conveying the information was received from Calcutta, at the time the police were on the premises. Now on a sheet of paper would be put down the figures 1 to 10. On the same sheet of paper would again be put down the figures 1 to 100. A customer would bet, say Rs. 1, against the figure 5. The booth-keeper would agree to pay him Rs. 10 if the figure 5 formed the last digit of the average sale price of opium. Similarly if a customer bet on the figure 15, something like this would be arranged. The customer would bet Rs. 5 and the booth-keeper would agree to pay Rs. 150, if the last two digits of the average sale price of opium came to be 15. A receipt would be granted to the customer and at once a note would be made on the sheet of paper containing all the numbers against the figure 15. Such sheets are before this Court and show that against some of the figures on which a betting took place the amounts which the booth-keeper had agreed to pay were noted. It has been found on evidence that it would be open to the booth-keeper to stop further betting on any particular figure. For example, if, on the figures 1 and 4 which actually were the last two digits of the sale price of opium, the booth-keeper found that he had too many bets against him, he would be at liberty to stop further betting on those figures.

4. It will be noticed that the booth-keeper stood the chance of losing only when the betting became too heavy on one digit or on two digits containing the former digit. Thus out of altogether 110 figures the booth-keeper would lose, in this particular case, on the figure 4 and on the figure 14. He would gain on all the bettings that took place on the remaining 108 figures. Of course there would be no betting at all on some of the figures. Further, it has been found that the booth-keeper had an opportunity of minimising his probable loss by transferring some of his responsibility to other booth-keepers just as in the case of a heavy, insurance on a particular life one insurance' company re-assures the life with another company. In such cases if there is a loss the loss is shared by one or more booth-keepers.

5. On these facts, it is clear that a booth-keeper has always before him the sheet of paper on which all the bettings are noted. Even without much intelligence, he

would be able to see whether in the case of a particular figure or figures coming out as the last two digits of opium sale he has a chance of losing or gaining. If he finds that the sum-total of the bettings on other figures is more than the betting on any two particular figures, he need have no apprehension of losing. Under the circumstances it must be taken as a fact that from the method of business Gamed on, the chance of loss by a booth-keeper is extremely rare and almost nil.

6. Now the question is whether in the circumstances of this case the applicants may rightly be held as maintaining a 'common gaming house.' The leading case on the point, so far as this Court is concerned, is still the case of Lachchi Ram v. Emperor A.I.R. 1922 All. 61. In this case it was laid down by Stuart, J., with the concurrence of Gokul Prasad, J., that 'it must be established that the owner or occupier takes a fixed commission which is irrespective of the result of the gaming or, at the outside, that he manipulates the conditions in such a manner that he cannot possibly lose', in order that a man may be convicted of keeping a common gaming house. This case was considered by a Full Bench of this Court as recently as in January last year and it was held that in the circumstances of that case the applicant was rightly convicted of the offence of keeping a common gaming house. In that case, Atma Ram v. King-Emperor A.I.R. 1924 All. 338, no commission was charged by Atma Ram. But he transacted his business so cleverly that although he might lose on a certain figure, he was sure to gain on most of the other figures and the ultimate result would in all probability be a gain. Their Lordships, who composed the Full Bench, did not express any dissent from Lachchi Ram's case, but thought that the case before them did come within the purview of that case. I am of opinion that the present cases came within the ruling of Atma Ram v. King-Emperor A.I.R. 1924 All. 338, and the applicants are all guilty of keeping a common gaming house.

7. It has been pointed out to me that the Bombay High Court in Emperor v. Dattatraya Shankar Paranjpe A.I.R. 1924 Bom. 184 dissented from Lachchi Ram's A.I.R. 1922 All. 61 case. It is not necessary for me to consider whether the Bombay case was rightly decided or not; because I find that the authorities in this Court are not in conflict and the latest Full Bench case does govern the cases before me.

8. The result is that all these applications fail and they are hereby rejected.

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