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Court : Allahabad

Decided On : Feb-04-1927

Reported in : AIR1927All480; 101Ind.Cas.474

Appellant : ismail and ors.

Respondent : Emperor

Judgement :

Boys, J.

1. In this case the Magistrate has convicted two persons Ismail and Ibrahim, for keeping a common gaming house, and one Behari for gaming in that common gaming house The facts found are that a shop and a house belonged to Ismail and Ibrahim jointly, that when the shop was raided 'satta' papers were found, and when the house was raided advertisements of the 'satta' gambling were found and accounts of the 'satta' gambling. In the shop was Ismail who was writing on a bit of paper; in the house was Ibrahim. Both men declared that the papers found were waste paper. There can be no doubt on the facts, as found by the Magistrate, that they were not waste papers, but memoranda of 'satta' gambling and that the two men, Ismail and Ibrahim, were jointly carrying on the gambling business. The learned Sessions Judge has referred this case on several grounds, firstly, on the strength of a Calcutta decision, Satish Chandra Mitra v. Manmatha Nath Mitra A.I.R. 1921 Cal. 165. He has held that the Magistrate's action in destroying his

'notes' of the summary trial was illegal. This is not so according to the view of this Court, though the learned Judge could not be expected to be aware of the ruling which has, so far as I can ascertain, not yet been actually reported. It is *Mantoo Tewari v. Emperor* : AIR1927 All124 ., Criminal Reference No. 428 of 1926, in which a judgment delivered by me on the 22nd of October 1926 was on October 28, 1926 approved on reference to a Division Bench by the Acting Chief Justice, Sir Cecil Walsh and Mr. Justice Banerji. There was, therefore, nothing illegal in this case in the Magistrate destroying his notes.

2. Next, the learned Judge has held that the papers found were not instruments of gaming and he has so held on the authority of the Full Bench case, *Atma Ram v. King Emperor* A.I.R. 1924 All. 338. I do not so read the decision in *Atma Ram's* case A.I.R. 1924 All. 338. The learned Judges held that where 'satta' gambling was going on, the bits of paper rolled up in a ball on which the figures were written were instruments of gaming. At page 254 of the report they say: 'It is quite clear that these balls of paper were instruments of gaming.' There is no substantial difference between the papers used in that case and the papers found in the house of Ismail in this case. So far then the case quoted would support the learned Magistrate's finding. It is clear that in *Atma Ram's* case A.I.R. 1924 All. 338 the Court had no doubt about the question whether such papers were instruments of gaming.

3. Next the learned Judge suggests that it was necessary to establish that the making of profit was certain, and he holds this on the authority also of the same case to which I have already referred, that of *Atma Ram* A.I.R. 1924 All. 338. The question referred to the Full Bench in that case was as to the interpretation of the words 'for the profit or gain of the person,' i.e., whether the words 'for the profit' necessitated proof that profit was certain to result or whether it was sufficient that the instruments were used in the hope of profit. But that question was not decided by the Full Bench because it found that in the particular case profit was certain to result and, therefore, in any event the particular case came within the more strict interpretation, assuming that interpretation was not held to be in fact the correct one. If I had to decide the point I should unhesitatingly hold that it was not necessary to prove that profit was certain to result. In my opinion a mere

expectation of profit would suffice. I further note that such a case as this comes within the first definition of 'common gaming house' in the United Provinces Public Gambling (Amendment) Act No. 1 of 1925, in which the phrase 'for the profit or gain' does not appear.

4. In view of what I have said above I see no reason to differentiate between the case of Ismail and Ibrahim. As regards Behari the finding of fact is stated by the learned Sessions Judge and I see no reason to interfere with it.

5. The result is that I decline to accept the reference. The conviction will be maintained and the papers returned.

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