

**Qabul Singh Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Apr-26-1940

**Reported in :** AIR1940All412

**Appellant :** Qabul Singh

**Respondent :** Emperor

**Judgement :**

ORDER

**Allsop, J.**

1. I have before me two applications for the revision of orders passed by a learned Magistrate in the district of Muzaffarnagar. One is an application by Qabul Singh who has been sentenced to rigorous imprisonment for a period of one month under Section 3, Gambling Act, and the other is an application by four men who have been sentenced to a fine of Rs. 50 each under Section 4 of the same Act. It appears that a Sub-Inspector of Police obtained from a Magistrate a warrant to search the house of Qabul Singh because he had received information that this man was indulging in what is known as satta gambling, that is gambling on certain winning numbers which were to be ascertained in some way. The Sub-Inspector went to Qabul Singh's house in pursuance of the warrant of search and he found this man on the platform in front of the house writing numbers upon slips of paper. The man was searched in the presence of two witnesses and certain slips with

numbers written upon them were found upon his person. Slips were also found upon the persons of two of those who were with him at the time. The four men who have made one of the applications were all present. The police also found some note book or register or book of some kind in which it appears that certain figures had been written. On these facts the applicants were prosecuted and have been convicted and sentenced as I have already stated. It is argued before me that there were no materials upon the record which would justify the convictions of the applicants. Learned counsel has drawn my attention to the definition of the term 'Common gaming house' given in the Public Gambling Act as amended by the Legislature of these Provinces. The definition is as follows:

'Common gaming house' means:

(1) In the case of gaming on the digits of the sale price of any commodity, for example, opium or cotton, or on the digits of papers or bales manipulated from within jars or other receptacles, or on the occurrence or non-occurrence of any natural event, for example, the rainfall or the quantity of rainfall, any house, room, tent, walled enclosure, space, vehicle, vessel, or any place whatsoever in which instruments of gaming are kept or used for such gaming.

(2) In the case of any other form of gaming, any house, room, tent, walled enclosure, space, vehicle, vessel, or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning or occupying, using or keeping such house, room, tent, enclosure, space vehicle, vessel or place whether by way of charge for use of such house, room, tent, enclosure, space, vehicle, place or instrument, or otherwise, howsoever.

2. Learned counsel has suggested that it is impossible for the prosecution to rely upon para. 1 of this definition unless they can show the manner in which the winning number was to be ascertained. His contention is that the winning number must be the sale price of a commodity or the quantity of rainfall or some number ascertained from some natural event or a number drawn from a jar or some receptacle of that kind. He points out that it is not suggested and there is no evidence that the place with which we are concerned would come within para. 2 of the definition because nobody suggests that Qabul Singh was making any profit

from the use of the place as a gaming house. It is quite clear to my mind that it is not all gaming of digits which constitutes a common gaming house. If the winning number is to be ascertained, in some manner other than that mentioned in para. 1 of the definition, then the place where the gaming was taking place would not be a common gaming house unless the occupier was obtaining some profit from the use of the place. Learned counsel for the Crown has, however, relied upon the provisions of Section 6 of the Act. He has pointed out that the house was searched in pursuance of a warrant issued under Section 5 and he says that it has been found as a fact by the Magistrate that these slips with numbers upon them and the register were found at the place where Qabul Singh and the other applicants were assembled in spite of the fact that Qabul Singh and the other applicants denied that these articles had been discovered. He says that these articles are instruments of gaming and that consequently the discovery of them is evidence, until the contrary is made to appear, that the place was being used as a common gaming house.

3. In my judgment this contention is correct. It has been urged on behalf of the applicants that these slips of paper cannot be described as instruments of gaming because there is nothing to show for what purpose they were being used. It seems to me, however, that it is impossible to argue with any force that it is necessary in every case to show that the alleged instrument was in fact being used for the purpose of gaming because if it was necessary to show that, then the provisions of Section 6 of the Act, would be entirely useless. The very wording of the first part of that Section which speaks of any cards, dice, gaming-tables, cloths, boards or other instruments of gaming shows that it is not necessary to prove that the particular instrument was in fact used for gaming because cards, for instance, may be and are used for many purposes other than gaming and still the discovery of cards would justify the Courts in using that discovery as evidence until the contrary was shown that the place was being used as a common gaming house. In the circumstances of this case these slips of paper with numbers upon them were found and one of the facts with which we are confronted is that none of the applicants ever attempted to explain the purpose for which these slips were being used. Slips of this kind are commonly used for the purpose of betting or wagering, and in the circumstances it seems to me that the learned Magistrate was justified

in concluding that these slips were being used as a means of or for the purpose of carrying on some form of gaming. They were instruments of gaming and their discovery was evidence which the Magistrate was entitled to consider as proving that the place where they were found was a common gaming house or in other words, that the other requisites of a common gaming house were established. As I have already said none of the applicants explained at the time or has since explained that these slips were being used for any purpose other than gaming or if they were used for gaming it was gaming of a kind which would not bring the place within the definition of a common gaming house. In these circumstances I am satisfied that the convictions were justified and there is no reason for interference in exercise of the revisional powers of this Court.

4. Learned counsel has urged that the sentence of imprisonment should not have been passed upon Qabul Singh as this was his first offence. There is some suggestion in the evidence that Qabul Singh has been carrying on an extensive business in the way of satta gambling and it was for the Magistrate to exercise his discretion in passing this sentence. I do not see any reason why I should interfere with this discretion. I therefore dismiss both the applications. Qabul Singh will surrender to his bail and serve out his sentence.