

Tandon and anr. Vs. Rex

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Court : Allahabad

Decided On : Jun-20-1949

Reported in : AIR1952All469

Judge : Seth, J.

Acts : Punjab Gambling Act, 1867 - Sections 4

Appeal No. : Criminal Revn. No. 1507 of 1948

Appellant : Tandon and anr.

Respondent : Rex

Advocate for Def. : K.L. Misra, Deputy Govt. Adv.

Advocate for Pet/Ap. : Shanti Bhushan, Adv.

Disposition : Application rejected

Judgement :

ORDER

Seth, J.

1. This is an application in revision by 1 Tandon and 2 Ram Prasad. They have been convicted of offences under Sections 3 and 4 of the Public Gambling Act.

2. Two points have been urged before me by the learned counsel for the applicants. The first contention is that the evidence on the record does not satisfy the requirements of Section 3 of the Act. It is contended that whereas it has been found that both the applicants are owners of the Kothri which has been found to be a gaming house, it has not been proved that they had knowingly permitted the same to be opened, Occupied, used or kept by any other person as a common gaming house. This is a pure question of fact and was not canvassed in the Court below. If it had been canvassed there, there would have been a clear finding on the point. The learned counsel was not entitled to raise this question of fact, for the first time, in this Court. I have, however, looked into the evidence in the case and I have no doubt that the requirements of the section are not wanting.

3. It is impossible to believe that this Kothri was used as a gaming house without their knowledge or without the permission of the two owners. Indeed the case for the prosecution is that these two persons had opened the gaming house and were running it. They certainly knowingly permitted the Kothri to be used and occupied by each other for the purpose of running a common gaming house. They have, therefore, been rightly convicted under Section 3 of the Act.

4. The second contention is that their conviction under Section 4 of the Act is bad inasmuch as it has not been proved that they were found gambling in the aforesaid gaming house. Reliance has been placed in support of this contention upon two decisions; one of them is a decision of the Chief Court of Punjab reported as: *Fazal Ahmad v. Queen Empress*, 35 Pun. Re. Cr. 1894 p. 118. It was held in that case that:

'Under Sections 4 and 6 of the Act the accused must actually be found in the house when the search is made. The Act nowhere makes the act of gambling, even in a common gaming-house, itself an offence; the offence is being found there when the house is lawfully searched.'

5. This decision was dissented from in the same Court the next year in the case of *Lal Chand v. Queen-Empress* 22 Pun, Re. Cr. 1895 p. 61 where after referring to it Rivaz J. observed:

'I agree with all that was said in that case except in the passage in the penultimate paragraph of the judgment at page 119, that seems to indicate that 'found in the house' means actually caught inside the house. I cannot doubt that a person is 'found in the house' within the true meaning of Section 4 of the Act, if he is actually seen gambling in the house before the police officer effects his actual entry, or is caught under circumstances which make it sufficiently clear that he was gambling in the house when the arrival of the police gave the alarm to its inmates even though he is actually arrested outside the house. The construction put upon a similar provision in Bombay is that: 'The section does not require that the accused should be actually arrested in the place where the gaming has been going on. Regina v. Nana Moroji, 8 Bom. H. C. R. Cr. 1.

6. The other case relied upon by the learned counsel is: Gurbux Singh v. Emperor, A. I. R. (25) 1938 Lah. 631 in which it was held that:

'The only crime under the Public Gambling Act is being found in the place where gambling is going on and it is no offence to gamble in a public place as long as a person is not found doing it. The persons not found in the place where gambling was going on cannot, therefore, be convicted under Section 4 of the Act.'

Lal Chand's case: (22) Pun. Re. Cr. 1895 does not appear to have been brought to the notice of the learned Judge but it also does not decide anything against it. In my opinion Fazal Ahmad's case, (35 Pun. He. Cr. 1894) takes too narrow a view of Section 4 of the Act and Lal Chand's case correctly lays down the law.

7. In the present case there is clear evidence of the sub-inspector that when he reached the spot he found that all the accused persons that were arrested were gambling. No doubt the sub-inspector states that as soon as he proceeded to the Kothri where the gambling was going on, the accused persons, including the applicant, rushed out of that Kothri. This does not mean that they were not found gambling when the raid was made. There is, thus, no force in this contention.

8. Lastly the counsel pleaded for the reduction of sentence. I do not consider that the sentence awarded is excessive in any way.

9. The application is, therefore, rejected. The order staying the realisation of fine is vacated.

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