

**Mahadeya Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/469578](http://sooperkanoon.com/469578)

**Court :** Allahabad

**Decided On :** Mar-11-1910

**Reported in :** 6Ind.Cas.586

**Judge :** George Knox, J.

**Appellant :** Mahadeya

**Respondent :** Emperor

**Judgement :**

**George Knox, J.**

1. Musammat Mahadeya has been convicted of an offence under Section 4, Act III of 1867. In addition to the sentence of fine passed upon her and others who have been tried with her, the Magistrate ordered that the instruments of gaming found in the house at the time, and moneys found on the floor and moneys found on the persons of the gamblers be also confiscated. Upon the person of Musammat Mahadeya, a watch and chain and ornaments were found and also Rs. 8 in cash. The applicant being under a misapprehension that an order had been made for the confiscation of her jewellery as well as of her cash, applied to the Court of Session at Mirzapur for revision of the Magistrate's order. From the explanation furnished by the learned Magistrate it appears that no order; was made or was intended to be made for the confiscation of the jewellery; and that the order that was made was intended to be made as regards the money found on the person of the

accused, as the Magistrate was of opinion that the money had been brought there for the purpose of gambling. The learned Sessions Judge, relying upon the case of Emperor v. Walli Mussaji 26 B. 641, has submitted the record to this Court with a recommendation that the moneys found on the person of Musammat Mahadeya be returned to her.

2. The learned Judges of the Bombay Court considered that in the Bombay Act IV of 1867, there was an intention to draw a distinction between moneys found in the house searched and moneys found on the persons of those found therein, and they held that on the phraseology of the section contained in the Bombay Act, the power to seize money in a case like the present does not extend to that found on the person. I have to deal with Act No. III of 1867. Section 5 of that Act authorises certain officers themselves to enter, or to authorise a proper officer of police to enter, a house, suspected of being a common gaming house, and to seize, inter alia, all moneys reasonably suspected of having been used or of being intended to be used for the purpose of gaming, which are found therein; also to search the persons of those whom he or such officer takes in custody, and to take possession of all instruments of gaming found upon such search. Section 8 provides that on the conviction of any person of keeping or using any such common gaming house or of being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed. He may also order any securities for money and other articles suspected of being instruments of gaming to be sold and converted into money and the proceeds thereof with all moneys seized therein to be forfeited. The section also gives the Magistrate a discretion to order any part thereof, i.e., of the money seized, to be returned to the persons appearing to have been severally thereunto entitled. I am not prepared to hold that Act III of 1867 does draw a distinction between moneys found on the person and those found in the house. In many cases it would be very difficult to draw that distinction; but in the present case I think the learned Magistrate would have used a wiser discretion in returning to Musammat Mahadeya the 8 rupees which were found on her person and which had not been up to the time of search used for the purpose of gaming. I, therefore, so far allow the application as to direct that this 8 rupees be returned to Musammat Mahadeya. In other respects, the order passed by the Magistrate will stand.

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