

Syam Behari Vs. Emperor

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Court : Allahabad

Decided On : Jun-11-1934

Reported in : AIR1934All987a; 153Ind.Cas.146

Appellant : Syam Behari

Respondent : Emperor

Judgement :

ORDER

Bajpai, J.

1. For the reasons given by the learned Sessions Judge in his referring order I accept his recommendation. It appears that a Magistrate who issued a warrant for the search of premises where gambling was reputed to take place also tried the case subsequently. It has been held in the case of Raja Ram v. Emperor 1924 Lah. 247, that an accused is materially prejudiced by the trial of the case by the very Magistrate who had issued the warrant. It is a matter of great importance in a case under the Gambling Act, that the issue of the warrant should be legal and regular and very often pleas on the illegality or the irregularity of the warrant are taken and sometimes it may be necessary to examine the Magistrate who issued the warrant. It is not desirable that that very Magistrate should try the case ultimately. I am therefore of the opinion the conviction cannot stand. I was then asked by the learned A.G.A., that I should order a retrial. The accused were only

fined Rs. 10 and apart from certain irregularities which the learned Counsel for the applicant says have been committed by the trial Magistrate, I am of the opinion that the accused had to undergo a great deal of trouble and expense in connection with this matter, and that it is not desirable to make them undergo another trial. I therefore set aside the conviction and the sentence and direct that the fine, if paid, be refunded.

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