Darab and ors. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/474122

Court : Allahabad

Decided On : Aug-03-1927

Reported in : AIR1928All20

Appellant : Darab and ors.

Respondent : Emperor

Judgement :

Iqbal Ahmad, J.

1. Darab and Taqi applicants were charged with offences punishable under Sections 3 and 4, Gambling Act, and were tried jointly with the other applicants who were charged under Section 4 of the Act. The learned Magistrate found Tarab and Taqi guilty under both the sections and the remaining applicants under Section 4. He ordered Noor Ahmad to execute a bond for Rs. 50 and to provide a surety in the sum of Rs. 50 to appear and receive sentence when called upon during the period of throe months and in the meanwhile to keep the peace and be of good behaviour. He sentenced Darab to three months rigorous imprisonment and a fine of Rs. 200 and he fined the other applicants. The learned Sessions Judge on appeal has affirmed the conviction and the sentences passed by the learned Magistrate.

2. It appears that, on the basis of certain information supplied to it, the police obtained a warrant for the search of the house of Darab and Taqi applicants, and

in accordance with that warrant raided their house on the 26th March 1927. It has been held by both the Courts below that the search warrant was illegal and, therefore, the Courts below have rightly held that no presumption under Section 6 of the Act arose that the house was a common gaming-house or the persons present in the house were there for the purpose of gaming. But the Courts below, on a consideration of the materials upon the record, have come to the conclusion that the case against each of the applicants was satisfactorily proved. With this finding I cannot interfere in the exercise of my revisional jurisdiction.

3. It is argued that Darab and Taqi could not be jointly tried with the other applicants inasmuch as Darab and Taqi were charged not only with offences punishable under Section 4 of the Act but also with the offence punishable under Section 3 of the Act and the other applicants were not charged under that section. I am unable to agree with this contention. It is true that Darab and Taqi were charged with an offence different from the offence with which the other accused were charged, but the offences alleged to have been committed by all the applicants were committed in the course of the same transaction, viz., in the course of gaming and, therefore, in view of the provisions of Clause d, Section 239, Criminal P.C., all the applicants could be jointly tried. In support of his contention the learned Counsel for the applicants has relied on the cases of Makhan v. Emperor [1910] 5 W.R. Cr. 1910 and Emperor v. Fazal Din [1915] 35 P.R. Cr. 1914. With all respect I am unable to agree with those decisions. No reason has been assigned by the learned Judge who decided those cases for holding that the offence of keeping a common gaming-house and the offence of gaming cannot be committed in the course of the same transaction.

4. In my judgment the decision of the Court below is perfectly correct and I dismiss this application.