

**Mani Ram and ors. Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/613812](http://sooperkanoon.com/613812)

**Court :** Punjab and Haryana

**Decided On :** Oct-26-1953

**Reported in :** AIR1954P& H164

**Judge :** Khosla and; Soni, JJ.

**Acts :** [Public Gambling Act, 1867](#) - Sections 3, 4, 5 and 6

**Appeal No. :** Criminal Revn. No. 452 of 1953

**Appellant :** Mani Ram and ors.

**Respondent :** The State

**Advocate for Def. :** H.S. Doabia, Adv. for;Adv. General

**Advocate for Pet/Ap. :** Bhagirath Dass, Adv.

**Disposition :** Revision allowed

**Judgement :**

**Khosla, J.**

1. This case was referred to a Division Bench by my brother Soni J. because he felt that the principles governing the interpretation of Section 6 of the Public Gambling Act required to be stated after a fuller consideration.

2. The facts briefly are that a house situated in the town of Amritsar was raided by the Police on the authority of a warrant issued under Section 5 of the Gambling Act on the night of 15-10-1952. In this house seven persons including Mani Ram who is admittedly the owner and occupier of the house were found. The Police also, found playing-cards and money which were being used by the various persons in a game of chance. These persons were prosecuted under the Gambling Act, Mani Ram for being the owner and occupier of a public gaminghouse under Section 3 and the remaining six persons for being found in a gaming-house under Section 4. The accused persons put forward a somewhat stupid defence with which we are not concerned now, and the only point for our decision is whether in the circumstances of the case the presumption arising under Section 6 of the Act is sufficient to hold these seven persons guilty of the offences of which they have been convicted.

3. On behalf of the accused persons it was contended before us by Mr. Bhagirath Das that the night of occurrence was two days before Diwali day and that the Diwali festival is considered an auspicious occasion for gambling by all Hindus. Indeed, the gambling has assumed the proportions of a religious rite on this occasion. It was further contended that Mani Ram is a Municipal employee and is not the keeper of a gaminghouse and the remaining six persons who were found in the house are not the kind of persons who indulge habitually in gambling, and had gone to Mani Ram's house as friends to celebrate the Diwali festival. Mr. Bhagirath Das also contended that the prosecution had not proved all the ingredients of the charges upon which the convictions of the petitioners were based.

4. My brother Soni J. has referred to a large number of cases and Judicial pronouncements of Courts in England and In India. 'Common gaming-house' is defined in Section 1 of the Act as

'any house or room or tent or enclosure or vehicle or vessel or any place whatsoever in which any instruments of gaming are kept or used for gaming purposes with a view to the profit or gain of any person owning, occupying, or keeping such house.....whether by way of chargefor. the use of such

house.....or instruments or otherwise howsoever.'

Under Section 3 a person who owns, occupies or uses a common gaming-house is liable to a penalty, and under Section 4 whoever is found in a common gaming-house is also liable to a penalty. It is therefore clear that in order to convict a person under Section 3 It is necessary to prove:

1. that the premises are habitually used for gambling;
2. that the premises are owned or occupied by the accused person;
3. that the premises are used for gambling with the intention or knowledge of the accused person; and
4. that the accused derives some gain or profit from the gambling.

In order to find a person guilty under Section 4 It must be further proved that he was present in the gaming-house.

5. Mr. Har Parshad who appeared on behalf of the State frankly conceded that these ingredients must be proved by the prosecution. The English decisions as also, certain remarks made in -- 'Emperor v. Alloomiya Hussain', 28 Bom 129 (A), clearly show that a house must be habitually used as a gaming-house and the person who owns or occupies it must have the intention or knowledge that it is being so used. Similarly the accused person must derive some benefit or profit from the game, otherwise he cannot be held guilty under Section 3. But the question is what is the mode of proving these ingredients. Section 6 of the Act clearly lays down that in certain cases a presumption of guilt arises. Under Section 6 if a house is raided on the authority of a warrant under Section 5 and cards, dice or instruments of gaming are found in the house, then it may be presumed that the house is a common gaming-house and the persons present in the house at the time of the search had gone there for the purpose of gaming.

Under Section 6 the presence of certain articles is evidence until the contrary is made to appear that the house is a common gaming-house. The presumption arising under Section 6, however, is not conclusive and may in certain

circumstances be extremely weak. I am clearly of the view that ever in a case where no defence evidence is led the presumption may be rebutted by bringing out circumstances which go to show that some or all the ingredients which constitute the offence under Section 3 or the offence under Section 4 are lacking, and in such a case the accused persons will not be held guilty. There is no doubt that a presumption does arise under Section 6, and it is for this reason that the English rulings which require independent proof of a habitual user, intention or knowledge and the incidence of gain or profit to the occupier of the house have no application. It seems that there is nothing corresponding to Section 6 in English Law. At any rate no such provisions have been brought to our notice. In the presence of Section 6 of the Indian Act the presumption clearly arises and must be recognised.

In the present case we find that the occasion was two days before the Diwali day and it is a matter of common knowledge that in these days Hindus indulge in a great deal of gambling because it is considered auspicious. Again Mani Bam is a Municipal employee and it has not been shown that he has derived any profit or gain from gambling either on this occasion or on any other occasion. The presence of a pot containing some money near his knee is scarcely evidence of the fact that he was taking a share of the winnings of other persons. Nor has it been shown that in this house gambling took place on any previous occasion, & these circumstances appear to me to be quite sufficient to rebut the presumption arising under Section 6 of the Act. I would therefore hold that the charges have not been brought home to the petitioners in this case and allowing the petition acquit them. Fines, if paid, will be refunded.

**Soni, J.**

6. I agree.