

The State of Gujarat Vs. Babusing Medasingh and anr.

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Court : Gujarat

Decided On : Sep-09-1966

Reported in : AIR1967Guj282; 1967CriLJ1634; (1968)0GLR74

Judge : N.K. Vakil and; M.U. Shah, JJ.

Acts : [Bombay Prevention of Gambling Act, 1887](#) - Sections 6, 6(1) and 7;
[Constitution of India](#) - Article 245

Appeal No. : Criminal Appeal No. 1099 of 1964

Appellant : The State of Gujarat

Respondent : Babusing Medasingh and anr.

Advocate for Def. : H.K. Thakore, Adv.

Advocate for Pet/Ap. : G.T. Nanavati, Asst. Government Pleader

Judgement :

Vakil, J.

(1) This criminal appeal is filed by the State against the order of the City Magistrate, 10th Court, Ahmedabad, in Summary Case No. 541 of 1964, whereby the two respondents were acquitted of the charges under Section 4 and 5 of the [Bombay Prevention of Gambling Act, 1887](#). Before this appeal could be heard, on

13th June 1965, Respondent No. 1 (Original accused No. 1) has died. His death certificate is produced and the learned Assistant Government Pleader, Mr. G.T. Nanavati, appearing for the Appellant - State, concedes that Respondent No. 1 has died. So we have now to consider the appeal against Respondent No. 2 only.

(2) On the 12th of December 1963, Police Inspector B.F. Jadeja, suspecting that in the house of deceased Respondent No. 1, he and Respondent No. 2 were gaming, raided the house in the presence of the Panchas. The prosecution case was that they were found taking Satta-betting i.e. gambling on American futures. Both the Respondents were found sitting on a carpet. Respondent No. 1 was writing something on a pad. Then both were seen counting money. Then the raiding party entered the room and found 68 slips whereon the names of certain persons were written. These slips and some amount were attached. They also attached a consolidated Statement and a diary showing some accounts of several persons. On these facts, accused No. 1 faced the charges under Ss. 4 and 5 and accused No. 2 under Section 5 of the Bombay Prevention of Gambling Act. It was claimed that Police Inspector Jadeja was authorized by general order by the Police Commissioner dated the 12th of January 1962 under Section 6 of the Bombay Prevention of Gambling Act. It is Exhibit 4 and is as follows:-

'Order under Section 6 of the Bombay Prevention of Gambling Act.

In exercise of the powers vested in me under Section 6(1) of the [Bombay Prevention of Gambling Act, 1887](#), (Bom. 4 of 1887), as amended upto date, I.N. Rama Iyer, Commissioner of Police, Ahmedabad City hereby empower Shri B.F. Jadeja, Inspector of Police, Ahmedabad City.

(a) to enter with the Assistance of such persons, as may be found necessary by night or day, and by force, if necessary, any house, room or place which he has reason to suspect is used as a common gaming house.

(b) to search all parts of the house, room or place which he shall have so entered, when shall have reason to suspect that any instruments of gaming are found therein, whether such persons are then actually gaming or not.

(c) to seize all things which are reasonably suspected to have been used or intended to be used for the purpose of gaming and which are found therein.

Given under my hand and seal this 12th day of January 62 at Ahmedabad.

Sd. (N. Ram Iyer)

Commissioner of Police,

Ahmedabad City.

(3) At the trial, after recording the evidence, the learned Magistrate held that the order Exhibit 4 whereby P.L. Jadeja, was empowered by the Police Commissioner could not be held to be a 'general order' within the meaning of Section 6 of the Bombay Prevention of Gambling Act and, therefore, the presumption under Section 7 of the said Act could not arise. He further held that in the absence of such a presumption, the actual gaming as also the profit and gain motive of accused No. 1 has also to be proved by the prosecution. But the prosecution had failed to put on record any evidence to prove either of these facts. On these grounds, the learned Magistrate acquitted both the accused.

(4) Mr. G.T. Nanavati, the learned Assistant Government Pleader on behalf of the State contended that the learned Magistrate's finding that Exhibit 4 could not be held to be a 'general order' within the meaning of Section 6 is per se erroneous. The reasoning adopted by the learned Magistrate to come to that conclusion is based on a misconception of the provisions of the [Constitution of India](#) and it requires to be set aside. Mr. Thakore appearing for the Respondents very fairly conceded that he found it difficult to sustain the judgment of the learned Magistrate on the reasoning adopted by him, but he sought permission to support the acquittal of the accused on other contentions which we shall presently mention.

(5) This appeal, when it came for hearing before Mr. Justice Sarela, an application was given on behalf of the respondents to the effect that Criminal Appeal No. 856 of 1964 had been referred to the Division Bench by the learned Judge as the contention regarding vires of Sections 6 and 7 was raised in the said appeal. The learned advocates desired to agitate the same question in the present appeal also

and, therefore, this appeal may also be referred to the Division Bench with a direction that it may be heard at the time when Criminal Appeal No. 856 of 1964 may be heard. The learned Judge was pleased to make that order and that is why both these appeals were placed before us and we have heard them one after the other. We have given permission to the learned advocate for this respondents to raise the contentions on the constitutional grounds in this appeal also and before we take up the consideration of the judgment of learned Magistrate as it stands, we will dispose of the new contentions raised on behalf of the respondents to support the acquittal of the respondents,:

(1) The first submission in this respect was that the statutory provision of Section 6 applies unequally to persons residing in the area for which a Commissioner of police has been appointed and areas elsewhere and it thus violates the constitutional guarantee and, therefore, the provision that authorises the Commissioner of Police to empower, by a general order, a Police Officer not below the rank of Sub-Inspector of Police to do the various things mentioned in the said Section should be struck down as it violate the principle enshrined in Article 14 of the Constitution.

(2) If it were to be held that the said statutory provision itself is not enacting a discriminatory rule of law, it would in any case enable unequal or discriminatory treatment to be accorded, as the legislature has vested a discretion in that Officer by this provision in Section 6 without laying down any policy or disclosing any intelligible purpose and has thus vested in the authority unguided and arbitrary powers enabling him to discriminate; Clause (f) of sub section (1) of Section 6 inasmuch as it empowers the Commissioner of Police to issue the general order should be held to be ultra vires Article 14.

(3) Discrimination results between the accused who are tried under the Bombay Prevention of Gambling Act and those who are tried under other penal Acts, inasmuch as the presumption against the accused is drawn under Section 7 of the Act, if the raid is made by the Police Officer under the authority of the 'general order' given under section 6(1) (i). Therefore, Section 6(1)(i) is ultra vires, Article 14 of the Constitution, so far as it empowers the issue of general order.

(6) As mentioned herein above, we have heard this appeal soon after the other and we have given our judgment in Criminal Appeal No. 856 of 1964 today wherein, after hearing the parties, for reasons fully discussed, we have rejected the contentions raised in respect of the vires of Section 6 and 7 of the Act on the allegation that they violate the fundamental right guaranteed by Article 14 of the Constitution. The contentions raised in this appeal are identical with those that were raised in the appeal. Mr. H.K. Thakore appeared in the said appeal also for the accused (Appellants) of that case and he has nothing more to add. We do not, therefore, find it necessary to discuss them all over again and, for the reasons mentioned in the said judgment, we reject these contentions in this case also.

(7) We now deal with the judgment of the learned Magistrate as it stands, against which this appeal is directed. The learned Magistrate began his judgment by posing the following question for being answered:-

'Whether if a search is made and instrument of gaming are seized by a Police Officer armed with an order like Exhibit 4, a presumption under Section 7 of the Bombay Prevention of Gambling Act can arise?

The learned Magistrate then has reproduced Section 6 and has made the following observations:-

'Now this provision of empowering sub Inspector or any Officer above him in rank by general order in writing by the Commissioner of police is added by Bombay Act 4 of 1959 in order to minimise delay and leakages which were found in the working special warrants issued under Section 6 of the B.P. of Gambling Act. Now, let us see whether the order Exh. 4 can be taken to be the order meant by Section 6 of B.P. of Gambling Act or not.'

The learned Magistrate then has pointed out that this order did not specify within what time it was to be executed, it did not specify with respect to which person and with respect to which place it was to be put in action. It only gave a general authority to Mr. B.F. Jadeja, to enter and search the place which he had reason to suspect was used as a common gaming house. He has further observed as follows:-

'If by Section 6 of the B.P. of Gambling Act such general power is meant to be vested in Police Officers, then there is no policy laid down in the Act or general principles are laid down in the Act to guide when such general power can be vested. In that case this power can be vested in police officers arbitrarily. In that case it would be excessive delegation of legislature power and that would be hit by Article 245 of the Indian Constitution. '

With respect to the learned Magistrate, we have to observe that the reasoning adopted, is entirely misconceived and the learned Magistrate was in grave error when he found that this vesting of the power in the Commissioner of Police to authorise the subordinate Police Officer by a general order amounted to excessive delegation and was violative of the principle enshrined in Article 245. Article 245 of the Constitution is as follows:-

'(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by the Parliament whatever, to the facts of the present case. Article 245 only deals with the subject of legislation by the Parliament and the State Legislature and it has nothing to do with the delegation of discretionary powers by the State Legislature in its executive authorities, a Legislature while legislating cannot foresee for all future contingencies and it has to vest powers in the executive authorities to enforce the provisions of a statute. Where the legislature does no more than bale a duly authorised officer to meet the contingencies and deal with various situations as they arise, there is no delegation of legislative authority. It is obvious that so far as the provisions of Section 6 are concerned, no authority is vested in the Police Commissioner to enact any subordinate legislation and, therefore, when the learned Magistrate observes that this authorization amounts to excessive delegation of legislative power and, therefore, it is hit by Article 245, he is in obvious error.

(8) If any objection to the vires of the Section could be raised it could arise in the manner raised by Mr. Thakore before us. Having regard to well established principles and the facts and circumstances of the case, however, we have

negated these contentions. The first ground therefore, that was relied upon by the learned Magistrate for holding that Exhibit 4, the general order, could not be considered to be a valid general order under Section 6 cannot be sustained.

(9) The learned Magistrate, in order to emphasize his view point has adopted the following reasoning:-

'If such general power was meant by legislature then it was very easy for legislature to lay down that all police officers not below the rank of Police Sub-Inspector are empowered to enter and search the house or place which he has reason to suspect is used as a common gaming house but the legislature has meant something else and not that what apparently appears'.

We are constrained to say that here again the learned Magistrate has embarked on an erroneous line of reasoning. When the legislature has in its wisdom left the discretion to a particular authority, it obviously has thought that the authority was worthy of its confidence and the presumption is that the discretion will not be abused. Once the vesting of such authority is found not to be in conflict with any of the provisions of the Constitution, it is not for the Courts to challenge the wisdom of vesting of such discretion in the executive authority. May be that the particular authority, if it misuses the discretion or transgresses the limit of the power vested in it, it could be challenged on different grounds. But that could not entitle the Court to hold that the provision of the legislation itself is violative of any of the principles laid down in the Constitution. One thing is certain that the legislature has not given or vested all police officers not below the rank of Police Sub-Inspectors with the powers to enter a house or place which they have reason to suspect it used as a common gaming house. The legislature has vested this authority purposefully in a highly qualified and top official of the rank of the Police Commissioner to use his own discretion to select and authorise his subordinate officers with the powers under Section 6.

(10) The second ground on which the learned Magistrate based his judgment was that 'exhibit 4 is not a general order', but it is a 'general authority'. According to the learned Magistrate, for an order to be a general order within the meaning of Section 6, there must be an order to enter and search a particular place. That

order must specify the place to be entered and searched and the order should give all the details to show that it relates to a particular thing. In view of the learned Magistrate, 'a general order' could only mean to be an order which pertains to many places and persons not one place or person. If a police officer not below the rank of a Sub-Inspector had information that many places were used as common gaming house, he may lay all the information in respect of all those places before the Commissioner of Police and the Commissioner of Police after satisfying himself, instead of issuing special warrants in respect of each of such places in detail which are to be entered and searched. Such an order can only be a general order within the meaning of Section 6. According to the learned Magistrate, the object of giving such an authority to pass a general order was 'to avoid the P.S.I. having the need to come again and again before the Commissioner to take a special warrant when he wanted to search more places than one'. The learned Magistrate then expressed his apprehension that if the general order were to mean an order of the nature of Exhibit 4, then there would be no safety for any citizen. The holder of the order can misuse it to its limit without any risk, and this could not be the intention of the legislature. He, therefore, held that in his opinion Exhibit 4 was not an order at all as it did not give any details to identify the place which was to be entered and searched. According to him, a general order could either empower many competent officers to enter and search one and the same place or the general order could empower one competent officer to enter and search many places as detailed in the order. The said order even did not mention any time limit for execution. Such an order has to be executed within a reasonable time. Under all these circumstances, the learned Magistrate held, no presumption could arise under Section 7 when the Police Officer armed with Exhibit 4 entered into the premises of respondent No. 1.

(11) It would be convenient to reproduce Section 6 at this stage:-

'6. (1) It shall be lawful for a Police Officer -

(i) In any area for which a Commissioner of Police has been appointed not below the rank of a Sub Inspector and either empowered by general order in writing or authorized in each case by a special warrant issued by the Commissioner of

Police and

(ii) elsewhere not below the rank of a Sub-Inspector of Police authorised by special warrant issued in each case by a District Magistrate or Sub-Divisional Magistrate or by a Taluka Magistrate specially empowered by the State Government in this behalf or by a District, Additional, Assistant or Deputy Superintendent of Police and

(iii) without prejudice to the provision in Clause (ii) above, in such other area as the State Government may, by notification in the Official Gazette, specify in this behalf, not below the rank of a Sub Inspector, and empowered by general order in writing issued by the District Magistrate,

(a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any house, room or place which he has reason to suspect is used as a common gaming house,

(b) to search all parts of the house, room or place which he shall have so entered, when he shall have reason to suspect that any instruments of gaming are concealed therein, and also the persons whom he shall find therein whether such persons are then actually gaming or not,

(c) to take into custody and bring before a Magistrate all such persons,

(d) to seize all things which are reasonably suspected to have been used or intended to be used for the purposes of gaming, and which are found therein:

Provided that no officer shall be authorised by special warrant unless the Commissioner of Police, the Magistrate, the District (or Additional) or Assistant or Deputy Superintendent of police concerned is satisfied, upon making such enquiry as he may think necessary, that there are good grounds to suspect the said house, room or place to be used as a common gaming house. (2) xx xx xx xx xx xx xx xx xx'

We find it difficult to agree with the learned Magistrate on the construction he has placed on the impugned provision. It is true that the officer armed with the general

order exercises very wide powers and if so minded, the power could be misused. But that fact cannot be made a test for the purposes of interpreting Section 6 or the phrase 'general order'. One of the accepted principles of construction is that expressions in an enactment of the kind with which we are concerned, must be interpreted contextually and in a way which is consistent with the object of the statute. The other equally settled principle is that when the Court is called upon to construe an expression of a general nature as the one in the present case, particularly when it is introduced by way of an amendment, the reason thereof shall also have to be borne in mind for that has a nexus with the intention of the legislature. The intention of the law giver has ordinarily to be gathered from what it has thought fit to enact either in express language or by reasonably necessary implication and it is not permissible to look into the statement of objects and reasons, or other extraneous matters. But all the same rules of construction do permit a limited use thereof and that is to ascertain the then existing conditions and the extent and nature of the evil sought to be controlled or remedied by the enactment or the provision thereof introduced by way of an amendment and which the Court is called upon to construe. Keeping these trite principles in view, we may proceed to examine the question as to what is the scope and content of the words 'general order' which were for the first time introduced in the year 1936 by an amendment. Of course, even with that amendment Section 6 was not as it stands today. With that amendment, only the Commissioner of Police of Bombay was given the authority. It was in 1959 that by another amendment the words 'in the Greater Bombay' were deleted and the present phrase 'In any area for which a Commissioner of police has been appointed was added. The first thing to be noticed in this context in which these words are used. It is obvious that this expression is used in contradistinction with the expression 'special warrant' and further that in case of the 'special warrant', it is contemplated to be issued in respect of one specific case. Clause (i) of sub section (1) of Section (6) on a plain reading thereof, contemplates the vesting of authority in the Commissioner of Police, to empower an officer not below the rank of a sub-inspector to enter and search premises and the persons found therein as mentioned in Clauses (a), (b), (c), and (d) of the said section. The Commissioner of Police can empower the subordinate officer either by a 'general order' in writing or, in a specific case, by a

special warrant. Authorization by a special warrant has to be in respect of each particular case. Furthermore, the proviso makes it clear that some preliminary caution has to be exercised by the Commissioner of Police and he will issue the authority by special warrant only on being satisfied that there are good grounds existing to give such an authority to a particular subordinate officer to enter and search a particular house, room or place. The legislature has, therefore, by necessary implication, put the authority to empower by general order in writing, on a different plane. The general order in writing is not required to have any reference to a place or places, nor there is any precautionary condition precedent to be satisfied before the issuing of a general order in respect of any place or places to be entered and search. At this stage, it will be proper to have a look into the history of the legislation to ascertain the purpose and object of the enactment, what was the defect or mischief that existed and which was tried to be remedied by the amendment and what remedy the legislature had prescribed. Differently stated, we attempt to find the true meaning of the words by ascertaining the cause and need of introducing these words in the said clause (1) by reference to the factors stated and comparing one part with the other.

(12) Mr. Thakore, firstly drew out attention to the Report of the Select Committee in which the Bill for amending section 6 and other provisions of the Act, was entrusted in the year 1936. This is published in the Bombay Government Gazette, January 30, 1936. We would not like to enter into the details thereof, suffice it to say that the majority of members had recommended the amendment on the ground of the existing procedure deficient which permitted delay and enabled many offenders to avoid arrest and to make away with incriminating evidence by the time the police could effect an entry into suspected places. Two of the members had opposed. It would be interesting to note that two of its members had placed dissenting minutes and had felt the same apprehension the learned Magistrate has felt and in carping language criticised the proposed amendment introducing the giving of the authority to the Commissioner of police to empower by 'general order' in writing the subordinate officers.

(13) The legislature all the same accepted the majority recommendation and the impugned provision because the law of the land and has stood the test of its

continued necessity all these years and despite the fact that since its introduction and after the country attained independence, the Act received the attention of the State legislature no less than about eight times and necessary amendments were made. True it is that this report cannot be any direct material for the Court to construe the impugned expression and we have not referred to it for that purpose. We have mentioned it only for the limited purpose to show the condition prevailing and the evil that existed, the reason for the introduction thereof and the remedy contemplated to be provided. It is obvious that in large towns where complex conditions and problems of preservation of law and order exist in a larger measure for the Police administration, that necessitates the appointment of a very reasonable highly qualified and trusted officer of the rank of a Commissioner. It is also obvious that in such cities or areas one of the evils and problems to be tackled is the evil of gambling where the element of persons and opportunities for the evil predominate and have deep roots, corrupting the society at large. In such areas the existing provisions of the Statute for prevention of gambling were found to be inadequate. In order to remedy this defect and with a view to enforce the law to eradicate the growing threat of the evil more effectively, the legislature in its wisdom gave the power to the Commissioner of Police, a highly placed executive authority, to select his subordinate officers and clothe them with the powers under Clauses (a) to (d) merely by a written general order and dispensing with not only the need of issuing the orders in respect of each case to a particular officer but also the precautionary but cumbrous procedure as a condition precedent provided by the proviso in case of a special warrant. Having regard to all these facts and circumstances, we have no hesitation in coming to the conclusion that any attempt to give a restricted meaning to the impugned provision would (be ?) tantamount to the negation of the legislative intent and defeat the very purpose for which the provision was enacted. In our view, the words used being unambiguous, it is the duty of the Court to give effect to them, whatever may be the consequences. There is no reason indeed to come to the conclusion that the legislature may have intended otherwise.

(14) If the construction placed by the learned Magistrate were to be accepted, it would mean that a 'general order' under Section 6 could only be a common order combining several special warrants in favour of one police officer or a common

order in respect of several special warrants in favour of more than one police officer. Recognized canons of construction would not warrant such an interpretation. It appears that the anxiety felt by the learned Magistrate that such vast unrestricted power vested in a police officer who may not be higher in rank than a mere sub-Inspector would be a great danger to the citizens, led him to come to the conclusion that the legislature could not have intended such consequences and therefore the expression 'general order' could mean nothing more than what is indicated by him. But, even though a Court believes that the legislature did not contemplate the consequences of an enactment, a Court is bound to give effect to the clear language. In the present case, on the accepted canons of construction, it is not possible even to come to the conclusion that the legislative intent was not as we have indicated. In our judgment, therefore, Exhibit 4 is a 'general order' within the meaning of Section 6 and as Mr. Jadeja was armed with proper general order under Section 6, the consequent presumption under Section 7 would arise provided the other requirements of the said sections are satisfied.

(15) On the basis that the presumption was not available to the prosecution under Section 7, at the end of his judgment the learned Magistrate also appeared to decide the case on merits by a single remark that in the absence of presumption under Section 7, the mere find of betting slips, statement of accounts, pencil and money and the seizure could not be considered to be sufficient to prove the guilt of the accused either under Section 4 or Section 5 of the Bombay Prevention of Gambling Act. The prosecution has, under such circumstances, to prove the actual fact of gaming and there was no such evidence of that nature. The learned Magistrate has not at all discussed the evidence on merits.

(16) Before we close we would like to sound a note of warning and it is not the first of its kind,. and yet it will never be one too many. Though we feel bound under law, to put the construction we have on the impugned provision, it cannot be said that the apprehension felt by the learned Magistrate has either no basis or substance. Once the Police Officer, not lower in rank than a sub inspector is clothed with the authority by a 'general order' by the Commissioner of Police, there is no stopping to its being used at his will and discretion. The likelihood of abuse of

such wide powers in some cases cannot be disregarded. Once such police officer acts under the authority of the general order, subject to the provisions of Section 7, presumptions of far reaching consequences arise. It cannot readily be assumed that it would not be possible to bring into existence facts and evidence to make the case appear to fall within the four corners of the requirements of law to enable the raising of such presumption. It is, therefore, the bounden duty of the Court to examine in each case with abundant caution and care the facts and evidence put on record and unless its judicial conscience is reasonably satisfied that all that law requires to be complied with before the presumptions could come into existence, has been strictly followed and the evidence led is reliable, to refuse to act upon it.

(17) The result is what we find that Exhibit 4, the order dated 12th January 1962 passed by the Police Commissioner in favour of P.1. Jadeja is a valid general order under Section 6 and the presumption under Section 7, therefore, subject to the other provisions of the said section, would arise in this case. The finding made on the merits of the case is not based on any sufficient or proper appreciation of evidence. We have, therefore, no advantage of the reasoning on merits, of the learned trial Judge. The case having been tried as a summary case, we have not before us the full record of evidence of the witnesses. Under such circumstances we do not find it just and fair to decide the case on merits ourselves. We, therefore, allow the appeal and set aside the order of acquittal passed by the learned Magistrate against respondent No. 2 and order that the accused be retried according to law. The appeal against respondent no. 1 has abated, he having died on June 13, 1965.

(18) Appeal allowed and retrial ordered.