

State Vs. Laxminarain and ors.

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Court : Rajasthan

Decided On : Jul-27-1964

Reported in : AIR1965Raj5

Judge : D.M. Bhandari and; C.B. Bhargava, JJ.

Acts : Rajasthan Public Gambling Ordinance, 1949 - Sections 5 and 6; Police Act - Sections 4; Police Regulations, 1948

Appeal No. : Criminal Appeal No. 68 of 1962

Appellant : State

Respondent : Laxminarain and ors.

Advocate for Def. : R.K. Mirdha, Adv.

Advocate for Pet/Ap. : Kan Singh, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Bhandari, J.

1. This is an appeal on behalf of the State in which the trial magistrate has acquitted Laxmi Narain respondent of an offence under Section 3 of the Rajasthan Public Gambling Ordinance, 1949 (hereinafter called 'the Ordinance'). The other

respondents in this appeal have been acquitted under Section 4 of the Ordinance.

2. The prosecution case is that on 20th June 1960 Shri I.N. Gupta on receiving credible information issued a warrant under Section 5 of the Ordinance authorising Shri Vijay Bahadur, Station House Officer, Bhimganj Mandi, Kota with his subordinate officers to enter the shop of Shri Laxmi Narain and to seize all instruments of gaming, moneys, articles etc., reasonably suspected to be used for the purpose of gaming which may be found there. Shri I.N. Gupta purported to have signed the warrant as Superintendent of Police, Kota District, On the strength of this warrant Shri Vijay Bahadur entered the hotel of Laxmi Narain and found that except the respondent Laxmi Narain, all the accused were gambling with the aid of cards in two groups and Laxmi Narain was charging commission, on such gambling for his own profit. A complaint was filed against the respondent before the Assistant City Magistrate, Kota. The learned Magistrate acquitted all the accused on the ground that in this case no presumption under Section 6 of the Ordinance could be drawn as the warrant was not issued by the District Superintendent of Police as required by Section 5 of the Ordinance, nor was the warrant issued by the District Magistrate, or any other magistrate of the First Class and that the other evidence on record was not sufficient to bring home the guilt to the accused. Hence this appeal on behalf of the State.

3. In this appeal, it is conceded that if presumption under Section 6 of the Ordinance is not drawn, the other evidence on record is not sufficient to warrant the conviction of the accused. The only question, therefore, in this case is: 'Whether in the circumstances of this case, the presumption under Section 6 should have been drawn?' Learned Government Advocate has contended that Shri I.N. Gupta who had signed the warrant (Ex. P/4) purported to act as Superintendent of Police, Kota District, and, as such, it must be taken that Mr. Gupta was acting as District Superintendent of Police at the relevant time, and his warrant must be deemed to be a warrant issued by the District Superintendent of Police under Section 5 of the Ordinance. This contention cannot be sustained as it is evident from the statement of Mr. Gupta that he was merely an Additional Superintendent of Police, Kota District at the relevant time.

4. The next contention of the learned Government Advocate is that the Additional District Superintendent of Police must be deemed to be authorised to issue a warrant under Section 5 of the Ordinance as under the Rajasthan Police Regulations, 1948, the word 'Superintendent' included an Additional Superintendent and any officer, not below the rank of Inspector, temporarily discharging the duties of the Superintendent of Police when the latter is incapacitated or is absent from headquarters. Learned Government Advocate has further contended that under Section 1 of the Police Act (Act No. V of 1861) which had been applied to the State of Rajasthan, the words 'District Superintendent' and 'District Superintendent of Police' include any Assistant District Superintendent or other person appointed by general or special order of the State Government to perform all or any of the duties of a District Superintendent of Police under the Act in any district and that Shri I.N. Gupta was on the relevant date performing some of the duties of the District Superintendent of Police.

5. Before we take notice of these contentions we must point out that Section 5 of the Ordinance should be construed strictly for the simple reason that it confers authority on a particular officer to encroach on the liberty of the citizen. Section 6 goes even further and it provides that a presumption should be drawn with regard to a place that it is a gaming house in case that place has been entered or searched under the provisions of Section 5 and certain instruments of gaming are found there. It must be stated that drawing of such a presumption is contrary to the spirit of the Criminal Jurisprudence. It casts a burden on the accused to prove the contrary. Both the aspects of the matter have their own importance. The provisions of Sections 5 and 6 were held by the Supreme Court in *Krishnachandra v. The State of Madhya Pradesh Cri. Appeal (by Special Leave) No. 47 of 1961, D/- 25-1-1963 (SC)* as not offending Articles 20 and 21 of the Constitution. It has been pointed out that in order to root out the evil of gambling which was rampant, the law could provide special procedure containing adequate safeguards. One of the safeguards was that the power under Section 5 was given to superior officers who were expected to act reasonably and after due satisfaction.

6. The Fourth Amendment to the Constitution of the United States of America provides safeguards to the citizens from unreasonable searches and seizures and

permits them, the right to be secure in their homes, papers and effects from such search (p. 5 Searches, Seizures and Immunities, Vol. 1 by Varon).

7. The principle contained in the 4th Amendment, however, has not been incorporated as a fundamental right in our Constitution, Nonetheless the various laws in India have provided certain limitations of Police power, prohibitions and safeguards to secure to the public against all unreasonable searches and seizures. One of the safeguards provided in the Gambling Act is that the warrant must be issued by a particular authority. Section 5 has taken the precaution of naming a judicial authority or a District Superintendent of Police who can issue a warrant under certain circumstances. It is only the authorities so authorized who can issue a warrant under Section 5 and no other officer of equal or lower rank can do so even though he may be discharging some of the functions of the officer competent to issue the warrant. This safeguard is all the more necessary in view of the fact that under Section 6 a presumption is to be drawn, that the place searched is a gaming house if certain instruments of gaming are found there.

8. Let us now examine the provisions of the Indian Police Act and the Rajasthan Police Regulations in the light of the aforesaid observations. It was held by a Division Bench of this Court that under Notification dated 18-7-1950, the Indian Police Act was brought validly in force in Rajasthan (See State v. Babulal, ILR (1956) 6 Raj 636: (AIR 1957 Raj 28)). The relevant provisions of the Police Act are contained in Sections 1, 2 and 4. They are, as follows:

'1. The following words and expressions in this Act shall have the meaning assigned to them,

Interpretation clause.unless there be something in the subject or context repugnant to such construction, that is to say, -- The words 'District Superintendent', and 'District Superintendent of Police' shall include any Assistant District Superintendent or other person appointed by general or special order of the State Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district;'

* * * * * '2. The entire police establishment under a State Government shall, for the purposes of this Act, be deemed the force, etc. to be one police force, and shall be formally enrolled, and shall consist of such number of officers, and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.' * * * * * '4. The administration of the Police throughout a district shall of Police, etc. be vested in an officer to be styled the Inspector General of Police and in such Deputy Inspector General and Assistant Inspectors General as to the State Government shall seem fit.' The administration of the Police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such magistrate, be vested in a District Superintendent and such Assistant District Superintendent as the State Government shall consider necessary.'

It is clear from part 2 of Section 4 that the administration of Police of a district is to vest in 3 District Superintendent and such other Assistant District Superintendent as the State Government shall consider necessary. In our opinion, the District Superintendent mentioned in Section 5 of the Ordinance means the District Superintendent in whom the administration of Police in a district vests and no other officer. Section 5 of the Ordinance ensures that a Police Officer of a particular rank should issue the warrant and it is provided that that officer must be the District Superintendent, WE find it difficult to accept that the District Superintendent of Police in Section 5 should be construed liberally as including even an officer who exercises all or any of the powers of a District Superintendent of Police in a district. This argument, if accepted would have the effect of belittling the safeguards which had been inserted in Section 5 for protecting the rights of public in the matter of seizures and searches. Learned Government Advocate has pointed out that the administration of Police may be vested even in an Assistant District Superintendent of Police under Section 4 of the Indian Police Act and that the Additional District Superintendent of Police is of a higher rank. This argument, in our opinion, has no force as the requirement of Section 5 is that a particular officer having a particular rank must issue a warrant. Moreover, there is no material on record from which it can be gathered that Mr. Gupta was Assistant Superintendent of Police vested with the administration of the Police in the District.

9. Learned Government Advocate has laid much emphasis on the definition given in Section 1 of the Indian Police Act of the District Superintendent of Police. We may say at once that an interpretation clause can be utilized for the purpose of interpreting the provisions of the particular Act in which the interpretation clause is contained and not for interpreting any other Act. The opening words of Section 1 expressly say that the words and expressions used in the Indian Police Act shall have the meaning assigned to them, in the interpretation clause. It is, however, contended by the learned Government Advocate that the definition of the District Superintendent of Police given in Section 1 can be utilised for interpreting Section 4 and that the District Superintendent of Police must be construed to include any officer who is performing all or any of the duties of a District Superintendent of Police under the Indian Police Act in any district. We are of the view that this contention cannot be accepted. The interpretation clause cannot be applied in interpreting a section of the Act if there is something in the section itself which is repugnant to the definition contained in the interpreting clause. Section 4 is comprehensive in its nature and it provides for vesting of the administration of the Police in the District Superintendent of Police. If the State Government so wish, it may also vest it in the Assistant District Superintendent of Police but the State Government must specify the particular District Superintendent of Police in whom, the administration of Police is to vest. Obviously in Section 4 District Superintendent of Police cannot have the wide connotation given in Section 1.

10. Now let us turn to the Police Regulations, 1948. Learned Government Advocate has relied on Rule 1 of the Regulations the relevant part of which is, as follows:--

'1. In these regulations unless there is anything repugnant in the subject or context: (i) the word 'Superintendent' means Superintendent of Police and includes an Additional Superintendent and any officer, not below the rank of Inspector, temporarily discharging the duties of the Superintendent of Police when the latter is incapacitated or absent from headquarters.'

We may at once point out that these Regulations have not the force of law. These Regulations relate to the constitution of the Police force and allied matters. Rule 4

provides that the State is to be divided in a number of Police administrative divisions and Rule 7 provides for the administration of the Police. The relevant part of this rule is, as follows:

'7. (a) The administration of the Police throughout the general police district is under Section 4 of the Police Act 1861, vested in the Inspector General. The areas and posts shown in regulations 4 and 5 are controlled by officers as follows: (i) The Range -- A Deputy Inspector General or a Range Officer(ii) The District-- A Superintendent. In certain districts he is assisted by one or more Additional, Assistant or Deputy Superintendents.'

It is clear from Rule 7 itself that the District Superintendent of Police is the authority who is to be in control of the Police administration in a district. Such a District Superintendent of Police may in certain cases be assisted by one or more Assistant or Deputy Superintendents, but these officers do not thereby become District Superintendents of Police. Thus, the interpretation clause cannot be applied for determining which officer is in control of the Police administration in a District. In our view, nothing contained in the Rajasthan Police Regulations helps the contentions urged by the learned Government Advocate. We are, therefore, of the view that a search conducted on the strength of the warrant issued by Mr. Gupta cannot attract the provisions of Section 6 of the Ordinance.

11. We may now deal with some of the cases on this subject.

12. In *Nanhe Lal v. Emperor*, AIR 1925 All 301 (1), it was held that:

'An Assistant Superintendent of Police is not authorised under Section 5 of the Public Gambling Act to search a place without a warrant.'

and the search made by him was illegal and no presumption could be drawn under Section 6 of the Public Gambling Act.

13. In *Asgaralli Mahammadalli v. Emperor*, AIR 1940 Bom 127 it was held that Section 6 of the Bombay Prevention of Gambling Act (4 of 1887) authorised only the District Superintendent of Police or an Assistant or Deputy Superintendent of Police especially empowered by the Government in this behalf to issue a search

warrant, and in that section nothing was said about the Additional District Superintendent of Police and that even though the Additional District Superintendent of Police may be carrying out all the duties of the District Superintendent under the Bombay District Police Act, he was not in fact a District Superintendent of Police and he could not be given power to issue a warrant under Section 6 of the Bombay Prevention of Gambling Act.

14. These two authorities support our view.

15. Learned Government Advocate has referred to *Gurappa v. Govt. of Mysore*, AIR 1953 Mys 14 in support of his argument. In this case, it was held that under Section 4(b) of the Mysore Police Act (5 of 1908), an Assistant Superintendent of Police or any other person could not be deemed to be a District Superintendent of Police for the purpose of the Mysore Police Act unless he was appointed by a general or special order of Government to perform all or any of the duties of a District Superintendent of Police under that Act in any District or part of a District. Their Lordships of the Mysore High Court, however, took into consideration the definition of 'District Superintendent' in Section 4 of the Mysore Police Act which included any Assistant Superintendent or other person appointed by general or special order of the Government to perform all or any of the duties of a District Superintendent of Police under the Act in any District or part of a District. Their Lordships held that under Rule 60 of the Mysore Police Manual, the duties of the Assistant Superintendent in charge of a sub-division were, within the sub-division the same as those of the Superintendent and that a search warrant signed by an Assistant Superintendent of Police must be deemed to be of a District Superintendent of Police for the purposes of Sections 38 and 63 of the Mysore Police Act.

This case is distinguishable as the law about gaming was contained in the Mysore Police Act itself. Section 38 of the Mysore Police Act provided for entry in a gaming house and search thereof, while Section 63 provided for raising the presumption on the lines of Section 6. In such a situation the Interpretation Clause contained in Section 4 could be utilised to construe Sections 38 and 63 of the Mysore Police Act. In our case, it is the Ordinance which embodies the law about

the public gambling and this Ordinance does not provide that the District Superintendent of Police is to be interpreted as including an Additional District Superintendent of Police.

16. Another case referred to by the learned Government Advocate is *Mool Chand v. The State*, AIR 1956 Punj 226. In that case, the Chief Commissioner of New Delhi was pleased to invest the Superintendent of Police, Delhi City, New Delhi and Rural, with powers of District Superintendent of Police to issue warrants under Section 5 of the Public Gambling Act, 1867, and it was held that a warrant issued by the Superintendent of Police, Delhi City must be deemed to be a warrant issued by the District Superintendent of Police. The power was conferred by the Chief Commissioner of New Delhi under Section 1 of the Indian Police Act, 1861. For one thing, we do not understand how such a power can be conferred under Section 1 of the Indian Police Act which is only an interpretation clause. Such a power could have been conferred under Section 2 which provides that State Government may constitute the entire police establishment under a State Government in such manner as shall from time to time be ordered by the State Government. But by merely exercising such a power a police officer does not become District Superintendent of Police.

As we have already pointed out the words 'District Superintendent of Police' should be construed as the officer in whom the administration of the police is vested and not the officer who performs all or any of the duties of District Superintendent of Police, either by general or special order of the State Government. Their Lordships of the Punjab High Court relied on Section 23 of the Police Act which deals with the duties of Police Officers and held that one of the duties of a Police Officer is to detect offenders and bring them to justice and this duty is to be exercised not with respect to the offences under the Penal Code but also with respect to the offences committed under other law. With great respect we may say that we are unable to draw any inference in favour of the prosecution by applying Section 23 of the Police Act.

17. We need not detain ourselves any further in entering in an elaborate discussion on this point as the Punjab case does not apply in the circumstances of

the instant case. That case only shows that if a State Government has conferred power on a Police Officer to act as a District Superintendent of Police for the particular purpose of issuing warrant under Section 5 of the Public Gambling Act. In the instant case it has not been pointed out that the power of issuing warrant under Section 5 had been conferred on Mr. Gupta.

18. We are humbly of the opinion that the District Superintendent of Police means the Superintendent of Police who has charge of the administration of the police in the district and not any other authority. Unless the State Government had placed the officer in charge of the police administration of the district, he cannot be deemed to be a District Superintendent of Police for the purposes of the Ordinance. In our opinion, Section 5 of the Ordinance must be construed strictly and in this light and not in the sense that any officer exercising any of the powers of the District Superintendent may become the District Superintendent of Police for the purposes of the Ordinance and may exercise the powers conferred under Section 5 of the Ordinance.

19. We are, therefore, of the view that no presumption under Section 6 of the Act can be drawn against the accused in this case. As already mentioned, the other evidence on the record is not sufficient to convict the accused.

20. The appeal, therefore, cannot succeed against any of the accused.

21. We may point out that some of the accused were not served in this case and the appeal was put up for hearing against the accused who had been served. In view of the conclusion to which we have reached, the appeal shall be deemed to be disposed of in toto. It is hereby dismissed against all the accused.