

State of Rajasthan Vs. Tarachand

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Court : Rajasthan

Decided On : Jul-17-1957

Reported in : AIR1958Raj108; 1958CriLJ692

Judge : J.S. Ranawat and; K.K. Sharma, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173; Rajasthan Gambling Ordinance, 1949 - Sections 3 and 4

Appeal No. : Criminal Appeal No. 131 of 1956

Appellant : State of Rajasthan

Respondent : Tarachand

Advocate for Def. : B.B. Mathur, Adv.

Advocate for Pet/Ap. : B.C. Chatterjee, Adv.

Disposition : Appeal allowed

Judgement :

J.S. Ranawat, J.

1. This is an appeal by the State against an Order of the City Magistrate, Jaipur dated 1st June, 1956 by which Tara Chand was acquitted for the reason that the Prosecuting Sub-Inspector had failed to furnish copies of the documents filed with

the complaint to the accused.

2. The facts of the case are that in pursuance of a warrant issued by the District Superintendent of Police, Jaipur, certain premises were searched on 5th May, 1956 by Sri Jaisingh Sub-Inspector, incharge of the police station, Kotwali, Jaipur, under Section 5 of the Gambling Act and Tarachand was arrested and certain instruments of gambling found on the premises were taken possession of by the police. Tarachand was produced before the Magistrate by Sri Jaisingh and a complaint was filed by him against the accused. On the date fixed for hearing of the case the Magistrate examined the accused who pleaded not guilty.

The Court then directed the Prosecuting Sub-Inspector to furnish copies of the prosecution documents to the accused, but he failed to comply with the order of the Court on the ground that the case was not a cognizable one and that there was no obligation on the prosecution to furnish such copies to the accused. The Magistrate then recorded an order of acquittal on the ground that the prosecution had failed to furnish copies of the documents to the accused under Section 173, Cr. P. C.

3. In this appeal it has been urged on behalf of the State that a case under Sections 3 and 4 of the Gambling Act cannot be regarded as a cognizable one and the provisions of Section 173, Cr. P. C., do not apply to such a case. It is also urged that there being no obligation on the prosecution to furnish copies of its documents to the accused the order of the Magistrate acquitting the accused for this reason is illegal and deserves to be set aside in this appeal.

4. Mr. Mathur has appeared for the accused and he has contended that a case under Sections 3 and 4 of the Gambling Act is a cognizable one and the procedure of Section 173, Cr. P. C- governs it. He has placed his reliance on the authority of *In re, Nagarmal Jankiram*, AIR 1941 Nag 338 (A), in which the decisions of the following cases were referred to and relied upon : *Queen-Empress v. Deodharsingh*. ILR 27 Cal 144 (B), *Emperor v. Ismail Hirji*, AIR 1930 Bom 49 (C) and *Maroti v. Emperor*, AIR 1939 Nag 95 (D).

5. Mr. Chatterjee for the State has cited the decisions of the following cases in support of his contention that a case under Sections 4 and 7 of the Rajasthan Gambling Ordinance is not a cognizable offence: Mahmoodkhan Doulatkhan v. Emperor, AIR 1942 Sind 106 (E), Htwan Htin v. Emperor, AIR 1935 Rang 181 (F) and Raghunath Lahanusa Walvekar v. Emperor, AIR 1932 Bom 610 (G).

6. The controversy in this appeal relates to the question of the applicability of the provisions of Section 173, Cr. P. C., to a case under Section 3 or 4 of the Rajasthan Gambling Ordinance. It is admitted by both the sides that Section 173, Cr. P. C., would only apply to this case if an offence under Sections 3 and 4 of the Gambling Act is held to be a cognizable one and would not apply if such a case is non-cognizable. The decision on the point would, therefore, hinge on the question whether a case under Sections 3 and 4 of the Rajasthan Gambling Ordinance is a cognizable one? Section 4 (1) (f) of the Criminal Procedure Code defines a cognizable offence as follows :

' 'Cognizable offence' means an offence for, and 'cognizable case' means a case in, which a police officer, within or without the presidency towns may, in accordance with the Second Schedule or under any law for the time being in force, arrest without warrant.'

7. A non-cognizable offence and a non-cognizable case have been defined in Section 4 (1) (n) as follows --

' 'Non-cognizable offence' means an offence for, and 'non-cognizable case" means a case in which a police officer, within or without a presidency town, may not arrest without warrant.'

8. Section 5 of the Rajasthan Gambling Ordinance provides that --

'if the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information, and after such enquiry as ha may think necessary, has reason to believe that any house, walled enclosure, room or place is used as a common gaming house,

he may either himself enter, or by his warrant authorised any officer of Police, not below such rank as the State Government shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary any such house, walled enclosure, room or place;

and may either himself take into custody, or authorise such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming;'

9. It may be noted that the power given to a District Superintendent of Police by Section 5 of the Gambling ordinance is dependent upon the fulfilment of certain conditions laid down in that section. It is not like the power given by section 54 Cr. P. C. , Moreover the Legislature did not intend to confer by Section 5 of the Gambling ordinance a general power of arrest in police officers as such, but has restricted it firstly to a particular class of officers only and secondly to fulfilment of certain conditions specified in the law. such a power therefore cannot be regarded as authorising a police officer to arrest without warrant. Second Schedule to the Criminal Procedure Code lays down under the heading of 'regarding offences against other laws' that if such offences are punishable with imprisonment for less than one year or with fine only, the police shall not arrest without warrant.

The decisions in the cases cited by Mr. Mathur, do not appear to take into account the point that in cases under Sections 3 and 4 of the Rajasthan Gambling Ordinance, the power vested in the District Superintendent of Police is not a general power but is a qualified one depending on fulfilment of certain special conditions laid down by the Act. We are, therefore, in respectful disagreement with these decisions. In our opinion the decisions referred to by Mr. Chatterjee in AIR 1942 Sind 106 (E): and AIR 1932 Bom 610 (G) lay down the law correctly. We may note the following observations of Davis C. J. in AIR 1942 Sind 106 (E):

'It is obvious that the special provisions of the Bombay Prevention of Gambling Act, are designed to exclude the general powers of arrest generally to be exercised by police officers. It is a special power of arrest to be exercised in, special circumstances subject to certain conditions precedent under special authority by certain police officers and Magistrates. I cannot persuade myself that

in such circumstances such offences are cognizable offences or were even intended by the Legislature to be cognizable offences under Section 4 (1) (f). Criminal P. C. The special provisions at the end of Schedule 2, Criminal Procedure Code, support this view.'

It may be pointed out that the provisions of the Bombay Prevention of Gambling Act, are similar to those contained in the Rajasthan Gambling Ordinance and the observations of the learned Chief Judge of the Sind Chief Court apply to the point at issue in this case.

10. The decision of the learned Magistrate does not appear to be in consonance with the provisions of the law. The provisions of Section 173, Cr. P. C. do not apply to the present case and there is no obligation in law on the prosecution to furnish copies of its documents to the accused.

11. The order of acquittal passed by the learned Magistrate is in view of the aforesaid discussion illegal and we therefore set it aside. This appeal succeeds and the order of the Magistrate is set aside and the case is sent back to the lower court for proceeding in accordance with the law.