

Devi Singh and anr. Vs. Shiv Ram Singh

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Court : Rajasthan

Decided On : Jun-15-1959

Reported in : AIR1960Raj150; 1960CriLJ853

Judge : D.S. Dave, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4(1), 155, 173, 190(1) and 247

Appeal No. : Criminal Ref. No. 12 of 1959

Appellant : Devi Singh and anr.

Respondent : Shiv Ram Singh

Advocate for Pet/Ap. : Raj Narain, Asstt. Govt. Adv.

Disposition : Reference rejected

Judgement :
ORDER

D.S. Dave, J.

1. This reference comes on the report of the learned Sessions Judge, Bharatpur, dated 28-11-1958.

2. The facts giving rise to it are that the District Superintendent of Police, Bharatpur, issued a warrant on 22-3-1958, under Section 5 of the Rajasthan Public Gambling Ordinance, 1949 (No. 48 of 1949). It was stated in the warrant that the Superintendent of Police had received credible information and that he was led to believe that the house of one Hira Sunar situated near Dal Bazar, Bharatpur, was used as a common gaming house. He, therefore, authorized Shri Shiv Ram Singh, Station House Officer, Bharatpur, to search the said house and to take into custody persons, who may be found therein, whether actually gaming or not, and also to seize the instruments of gaming, money, etc. The prosecution story is that on the basis of this warrant Shri Shiv Ram Singh raided Hira Sunar's house and thereafter the two accused Devisingh and Hukma were prosecuted in the Court of the City Magistrate, Bharatpur, for offences under Sections 3 and 4 of the Rajasthan Public Gambling Ordinance, 1949, (No. 48 of 1949), which will hereinafter be referred to as the Ordinance.

On 3-7-1958, two witnesses were examined on behalf of the prosecution and then the case was adjourned to 10-7-1958, for the statement of Shri Shiv Ram Singh. On 10-7-1958, when Shiv Ram Singh appeared in the Court, an objection was raised on behalf of the accused that he could not be examined, since he was a complainant he should have been the first to be examined and his two witnesses were already examined in the Court. This objection was decided by the trial Court on 18-8-1958, in favour of the accused. Another objection, which was raised on behalf of the accused, was that since Shri Shiv Ram Singh had failed to make personal appearance on an earlier date, the accused should be acquitted under Section 247, Cr. P. C. This objection was turned down by the Magistrate with the remark that it was not necessary for Shiv Ram Singh to be present on every date and his personal appearance was dispensed with by the Court.

Aggrieved by this order, the accused filed a revision application in the Court of the learned Sessions Judge. The learned Sessions Judge has reported that the Magistrate's order dated 18-8-1958, dispensing with the personal attendance of Shri Shiv Ram Singh was wrong, that if he wanted to dispense with his personal appearance, it ought to have been done earlier and since Shri Shiv Ram Singh was absent on earlier dates, the order of the City Magistrate dated 18-8-1958,

should be set aside and he should be directed to pass an order in accordance with law.

3. Nobody appears on behalf of the accused to support the reference. Learned Assistant Government Advocate has opposed the reference.

4. I have gone through the record of the trial Court and also given due consideration to the reasons given by the learned Sessions Judge in his report. The learned Sessions Judge has observed that the offences alleged against the accused are not cognizable offences and therefore the charge sheet submitted by the Police should be treated as a complaint and not AS a Police report. Both the learned Sessions Judge and the trial Court seem to be under the impression that this was a case covered by Section 247 of the Criminal Procedure Code.

5. It may be observed that the word 'complaint' has been defined under Section 4 (h), Cr. P. C., and according to that definition, it means

'an allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a Police officer.'

It is quite clear from this definition that a report of the Police officer is not included within the meaning of the term 'complaint'. In the present case, the Magistrate has taken cognizance on a report made by a Police officer and therefore it cannot be said that the case proceeded on a complaint. As pointed out above, the learned Sessions Judge seems to be under the impression that simply because the offence was not cognizable, the Police officer could not make a report and the report made by him should only be treated as a complaint. The learned Sessions Judge is clearly mistaken in his view that the Police can make a report only in a cognizable case and that it cannot make a report in any non-cognizable case.

It seems that the attention, of the learned Sessions Judge was not invited to the provisions of Section 155 which permit, a Police officer to make an investigation even in a non-cognizable case, though he cannot do so without an order of a Magistrate of the First Class or Second Class having power to try such case or

commit the same for trial. It cannot be denied with any justification that if a Police officer makes an investigation into a non-cognizable case on the orders of a Magistrate and if he makes a report after investigation, it will be a report covered by Section 173, Cr. P. C., and would be a Police report and not a private complaint. In *Public Prosecutor v. Ratnavelu Chetty*, AIR 1926 Mad 865 (FB), it was held by a Full Bench of the Madras High Court that -

'The report of police officer mentioned in Section 190 (1) (b) is not confined to a report of a cognizable offence. It includes even the police report in a non-cognizable case',

It may next be pointed out that there is a divergence of opinion on the question whether a case in which a Police Superintendent is authorized to arrest a person under the Gambling Act or Ordinance is cognizable or not. In *Emperor v. Abasbhai Abdulhussein*, AIR 1926 Bom 195, it was held, following the view in *Queen Empress v. Deodhar Singh*, ILR 27 Gal 144, that the offence was a cognizable one. It was urged before the learned Judges in that case that under the Gambling Act, it was not every Police Officer who could arrest without a warrant, that it was only the District Superintendent of Police who could do so under certain circumstances and therefore the offence was non-cognizable.

This contention was turned down and it was observed that the words 'a Police Officer' appearing in the definition of a cognizable offence do not mean any and every Police Officer, and it was sufficient if the Legislature had limited the power of arrest to a particular class of Police Officers. The same view was adopted in *Emperor v. Ismail Hirji*, AIR 1930 Bom 49, by another Division Bench of the same Court. A doubt was, however, created about the correctness of this view in a later decision of the same Court in *Raghunath Lahanusa v. Emperor*, AIR 1932 Bom 610, but the previous decisions were not over-ruled. In *Re Nagarmal Jankiram*, AIR 1941 Nag 338, a learned Single Judge of Nagpur High Court also took the view that in order that an offence may be a cognizable offence, it is not necessary that every police officer should have the power to arrest without warrant and as the District Superintendent of Police has such power of arrest without warrant under Section 5 of the Public Gambling Act, the offence is cognizable.

On the contrary, it was held in *Htwan Htin v. Emperor*, AIR 1935 Rang 181, that the offences under Sections 11 and 12 of the Burma Gambling Act were not cognizable offences. The view taken in ILR 27 Cal 144 and AIR 1926 Bom 195 were pointedly referred to but they were dissented from. This view proceeds on the ground that to the ordinary layman to say that a cognizable offence is one for which a Police Officer may arrest without a warrant, the idea conveyed would be that for such an offence the ordinary constable such as one sees on patrol duty, could effect the arrest. This very view was adopted in *Mahmoodkhan Doulatkhan v. Emperor*, AIR 1942 Sind 106.

6. In the present case, this Court is not called upon to decide whether the offences under Sections 3 and 4 of the Ordinance are cognizable or not. According to the view expressed in AIR 1926 Bom 195, and ILR 27 Cal 144, they would be cognizable offences, but even if according to the contrary view expressed in *Burma* and *Sind* cases, they may be taken to be non-cognizable offences for the sake of argument, it cannot be said merely on that basis that they would be covered by Section 247 of the Criminal Procedure Code. The main question for determination in the present case is, whether the accused are entitled to take advantage of the provision of Section 247, Cr. P. C. That section runs, as follows :

'If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day : Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance, and proceed with the case.'

It is clear from the opening sentence of this section that it would come into play only if the summons has been issued to the accused on complaint. In other words, it is necessary for the application of the above section that the magistrate should have taken cognizance of the case on a complaint and not on a Police report. It may also be mentioned here that there are a number of offences (for instance

offences under Sections 296, 297 and others) which are cognizable and which are still triable as summons cases. If a Police report is made in such cases, the provisions of Section 247, Cr. P. C., would not be attracted. In the present case, the Magistrate has taken cognizance on a Police report and not a private complaint, which excludes a Police report and therefore the provisions of Section 247 would not apply to this case.

7. The reference is misconceived and is hereby rejected.

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