

Rex Vs. Jaggopal Prasad and ors.

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SooperKanoon Citation : sooperkanoon.com/783772

Court : Chennai

Decided On : Jul-30-1941

Reported in : AIR1941Mad889(2); (1941)2MLJ397

Appellant : Rex

Respondent : Jaggopal Prasad and ors.

Judgement :

ORDER

Horwill, J.

1. The first respondent has been found guilty of running a gaming house and the other respondents of gaming within the house.

2. The only question that arises in this petition is whether the money found in the pockets of the three respondents should be confiscated. Under Section 47 of the City Police Act the Magistrate may order all or any of the articles seized or the proceeds thereof to be forfeited. Various articles were found about the premises, and the police also seized the money that was in the pockets of the three respondents. The Magistrate has declined to forfeit the money that was on their person, and the question that arises in this revision petition--which has been filed by the Crown--is whether the Magistrate's order was a right one.

3. There can be no doubt that the general principle to be adopted by a Magistrate in considering a question of this kind is whether the money is likely to have been used in connection with the gaming. If so, he should order its forfeiture. If not, he should refrain from doing so. The Magistrate has not really; considered this question at all; but has said that he intends following the practice of his Court to declare forfeited such money as may be found on the floor, and no more. The gaming of which the respondents were guilty was betting on horse races. When bets are made, money is taken and betting-slips written in duplicate, one kept by the owner and one by the client. The point on which the Crown rely is that the sum of money found on the persons of the accused roughly corresponds with the value of the betting slips. It is not to be expected, the learned Crown Prosecutor says, that money should be lying about on the floor. One would expect, when a bet is made, that the person conducting the betting would put the money in his pocket--not elsewhere. From the first respondent was recovered a sum of Rs. 443-11-0. The value of the betting slips on his person amounted Rs. 188. In a tin box belonging to him were found betting slips amounting to Rs. 272. Thus the total value of betting slips found in his possession was Rs. 460-14-0, a little over Rs. 17 more than the value of the money found in his pockets. On the person of the second accused was cash to the value of Rs. 19-4-0 and betting slips of the value of Rs. 24-8-0. On the person of the third accused cash was found to the value of Rs. 35-8-0 and betting slips of the value of Rs. 52-6-0. It is a question of fact in each case whether money found on the person of a person convicted under this Act was used for gaming. The close similarity between the sums found and the sums noted on the betting slips seems to be more than a coincidence, and I have little doubt in mind that the money found on the persons of the three accused was money used by them for gaming. The learned Magistrate's rule of thumb may do well enough in the average case, where there is no evidence one way or the other to indicate whether the money found on the person has been used for gaming or not; but where there is evidence pointing one way or the other the Magistrate is bound to take that evidence into consideration and not to rely entirely on his rough rule of practice.

4. The petition is, therefore, allowed and the money seized by the police ordered to be forfeited.

