

**In Re: A. Perayya**

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**SooperKanoon Citation :** [sooperkanoon.com/798899](http://sooperkanoon.com/798899)

**Court :** Chennai

**Decided On :** Jan-07-1946

**Reported in :** AIR1946Mad465; (1946)1MLJ436

**Appellant :** In Re: A. Perayya

**Judgement :**

ORDER

**Kuppuswami Ayyar, J.**

1. The main point in both these revision petitions is whether the search warrant was properly issued. What is stated is that in the warrant it is not stated what the materials were on which the Magistrate came to the conclusion that it was a case in which a warrant should be issued and it is also stated that the Magistrate has not stated therein that he has reason to believe that the place was used as a gaming house.

2. Two authorities are cited, one for the petitioner and another by the learned Public Prosecutor. The one relied on by the petitioner is reported in In re Thambi Ayyangar and Ors. In that case, there was no other evidence except the presumption sought to be raised under Section 6 of the Gaming Act. The other to the contra is a decision of Burn, J., in Naranappayya v. Emperor : (1938)1MLJ509 . It is not necessary to refer to either of these decisions. In this case the warrant purports to be issued by a second class Magistrate under Section 5 of the Gaming

Act. A Magistrate should be presumed to know law and also must be presumed to have known what the requirements are before he could issue the warrant. Section 5 does not state that the Magistrate should record what the materials were on which he was asked to issue the warrant or whether he believed them to be true or not. As already I stated, in this case the warrant purports to be issued under Section 5. The Magistrate would not have issued the warrant under this section unless he had been satisfied on the information supplied to him that it was necessary to issue the warrant. If these presumptions are drawn, then the warrant cannot be said to be invalid merely because of the fact that what the information was on which he was asked to issue the warrant was not stated. If the warrant is therefore validly issued, then the presumption naturally follows under Section 6 of the Gaming Act; that the place was used as a common gaming house and that the persons found therein were there present for the purpose of gaming and this will be enough to justify the convictions.

3. It is next urged that the evidence in one case has also been used in the other. The two cases were tried together and a common judgment has been written. It would have been better if the magistrate had referred only to the evidence in each case and written separate judgments. But then it is only an irregularity. The presumption that he could draw under Section 6 is the main material on which the judgment has been based. Further, there was also the evidence of the Circle Inspector and he had stated what the materials were. He has also stated that he believed the information to be true. In these circumstances I will not be justified in failing to draw the presumption under Section 6 and if this drawn then these petitions will have to be dismissed. I do not think this is a case in which I will be justified in interfering with the sentence.

4. The petitions are accordingly dismissed.