

**Sukumar Bose Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/860367](http://sooperkanoon.com/860367)

**Court :** Kolkata

**Decided On :** Jan-09-1947

**Reported in :** AIR1948Cal116

**Appellant :** Sukumar Bose

**Respondent :** Emperor

**Judgement :**

**Roxburgh, J.**

1. The petitioner in this case has been convicted under Section 11, Bengal Public Gambling Act of 1867 for unauthorised betting at the Calcutta Race Course. He has been fined Rs. 50 in default to suffer rigorous imprisonment for one week. A sum of Rs. 7500 which was found with him was directed to be forfeited. He was tried along with another man Shisu Ghosh who pleaded guilty and was then examined as a witness. When examined as a witness the latter denied that the present petitioner had any connection with him.

2. The principal point urged by Mr. Noad before us is that there is no authority under the Gambling Act (Act 2 [II] of 1867) for the Magistrate to direct forfeiture of the money found with the accused and we must accept this contention as sound. In Section 5 the Magistrate or other officer empowered is given certain powers to enter and search a suspected gaming house and it is provided that he.

may seize or authorise such officer to seize all instruments of gaming and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein.

3. In Section 6 it is laid down that 'when any cards, dice, gaming-tables, cloths, boards or other instruments of gaming' are found a certain presumption arises.

4. In Section 8 it is laid down that 'on conviction of any person for keeping or using any such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.'

5. In Section 11 the provision is that a 'police officer may seize all birds and animals and instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed, and such birds and animals to be sold.'

6. In Section 1 'instruments of gaming' are defined to include 'any article used as a means of appurtenance of, or for the purpose of carrying on or facilitating, gaming'.

7. In our opinion, throughout the Act a distinction is made on the one hand between instruments of gaming, birds and animals used for the purpose of gaming, and actual moneys, securities or valuables staked in the gaming on the other. In Section 8 a clear provision is made for conversion of securities or valuables into money and for disposal of the total so seized, some discretion being given to the Magistrate as to whether all is to be forfeited or some return is to be made to the person entitled thereto. In Section 11 no mention whatever is made of moneys and, in our opinion, there is no provision supporting the order of forfeiture in the present case passed by the learned Magistrate.

8. On the facts, there is, in our opinion, ample evidence to justify the learned Magistrate's finding that the accused was gambling in a public place.

9. We accordingly set aside the order of forfeiture of the sum of Rs. 7,500 found with the accused. The money will be returned to him. The conviction and sentence under Section 11 are upheld.

**Ellis, J.**

10. I agree.

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