

Phani Bhusan Kumar Vs. Emperor

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Court : Kolkata

Decided On : Aug-07-1936

Reported in : AIR1937Cal637

Appellant : Phani Bhusan Kumar

Respondent : Emperor

Judgement :

Nasim Ali, J.

1. The appellant has been convicted by the Fourth Presidency Magistrate of Calcutta under Section 44, Calcutta Police Act (Act 4 of 1866) and sentenced to pay a fine of Rs. 400, in default one month's rigorous imprisonment. The accused was charged with keeping a common gaming house in the office of the Deputy Accountant General, Posts and Telegraphs, situate at No. 7 Koilaghat Street, and allowing persons to gamble on race horses on Bombay races for gain of money at about 1 p. m., on 28th March 1936. He is an Assistant in that office. On 28th March 1936 at about 1 p. m., while he was working at his table in the office room, Inspector R.N. Gupta of the Calcutta Police searched the appellant's person and table on the authority of a search warrant issued by the Deputy Commissioner of Police, under Section 46 of the Act and seized three slips of paper Exs. 2, 3 and 4, a slip pad Ex. 5 and a leather purse containing Rs. 30-4-1 1/2. There is no evidence in this case to show that the appellant was actually betting in his office at

the time. The prosecution however relies on Exs. 2 and 3 under Section 47 of the Act, as evidence to show that the room was being used by the appellant as a common gaming house. In order that an article may be evidence under that section, it must be an instrument of gaming, i. e. an article used as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming. Gaming means wagering or betting except wagering or betting upon a race horse when such wagering or betting takes place on the day on which such race is to be run, in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose and with licensed book-makers, or by means of a totalizator, as defined by Section 14, Bengal Amusement-tax Act, 1922. Exs. 2 and 3 contain the names of certain horses and the amount of betting to be placed on those horses: Ex.2 refers to horse races at Bombay and Ex. 3 refers to horse races at Bombay and Tollygunj as well. Both are dated 28th March 1936. It is not disputed that the betting referred to in these two documents did not take place within the race course enclosure with any licensed book-maker or by means of a totalizator.

2. The next question for consideration is whether these slips can be considered as instruments of betting. The learned advocate for the appellant relied upon a decision of this Court in Hari Charan Banerjee v. Emperor : AIR1936 Cal355 and contended that in that case this Court held that slips similar to Exs. 2 and 3 were not instruments of gaming and were taken as not evidence of an incriminating nature. In that case however Jack, J. held that the slips might have been intended for wagering or betting within the race course. In the case before me however the two slips Exs. 2 and 3 clearly indicate that they were written out for the purpose of facilitating betting not within the race course with licensed book-makers or by means of a totalizator. The learned counsel for the Crown relied upon a decision of a Division Bench of this Court in M.M. Adams v. Emperor : AIR1935 Cal466 . In that case, betting slips similar to Ex. 3 were held to be instruments of gaming as they were used for the express purpose of facilitating betting operations which were in progress at the time when the Police raided the house and seized them. It is true that in the present Case Exs. 2 and 3 were seized at a time when betting operations were not going on, but it is clear from these two documents that they were written records of illegal betting. Further, it does not appear that these two

documents were written for facilitating betting operations in any place other than the room where they were seized. They are therefore evidence under Section 47 of the Act to show that the room in question was being used as a common gaming house.

3. The defence of the appellant however is that he never indulged in betting on race horses and that he never received any bets from anybody. The case of the appellant is that immediately before the Police arrived at the place, P.W. 3 Jamani told him that he was going upstairs to get pension commutation form for commuting his pension and left Exs. 2 and 3, which he said contained commutation calculations. Jamani in his evidence admitted that he had been to the accused that day and told him that he would commute his pension. He however says that he did not give any papers to him. D.W. 5 says that some slips of paper were given by Jamani to the appellant on that day. He however could not say what those papers were. He is working with the appellant at the same table for 24 years. The learned Magistrate has not believed his evidence and I see no reason to differ from him. I therefore agree with the learned Magistrate that Jamani did not make over Exs. 2 and 3 to the appellant. The two documents clearly show that the appellant was using his office as a gaming house. The appellant has therefore been rightly convicted.

4. In view of the facts and circumstances of the case, I am however of opinion that the ends of justice would be sufficiently met if the appellant is fined Rs. 200. The excess fine must be refunded to him. Subject to the above modification in the sentence, the appeal is dismissed. Out of the fine Rs. 20 will go to the Court Inspector and Rs. 40 to the complainant.