

**(1920) 12 CAL CK 0015**

**Calcutta High Court**

**Case No:** None

Gopal Kahar

APPELLANT

Vs

Emperor

RESPONDENT

**Date of Decision:** Dec. 8, 1920

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 182

**Citation:** 61 Ind. Cas. 171

**Hon'ble Judges:** Syed Shamsul Huda, J; Richardson, J

**Bench:** Division Bench

### **Judgement**

1. The petitioner before us was a Polite spy. He gave information to the Police that a room in a brothel was being; used for the purpose of gambling. A search warrant was issued and the room was searched. There was no gambling going on at the time and the evidence is, that there were no instruments of gaming, no sards, and no dice found on the premises. The Polite Beems to have come to the conclusion that the charge was false and the petitioner was prosecuted for giving false information u/s 182 of the Indian Penal Code. It is not disputed that, under that section, the burden lies on the prosecution to prove that the informer knew or believed the information to be false. See the cases of Moulvi Abdool Lutef, In re 9 W.R. 31 Cr. and Rayan Hutt v. Emperor 26 M. 640 : 1 Weir 122 At the trial, a number of witnesses were called on behalf of the prosecution. They included a prostitute, named Hem Nalini, who was the occupier of the room in question, her paramour, Joy Deb Marwari, and several friends of the latter witnesses Nos. 3, 10, 11 and 12, All these persons denied that there was any gambling going on in Hem Nalini's room. Other prostitutes living in the same house stated that they had not heard of any gambling going on in that room. The petitioner called four witnesses in support of his defense, also prostitutes. Three of them deny any knowledge of any gambling going on in Hem Nalini's room, while one, who used to live in the house but does not do so now, stated that there used to be gambling in a woman's room whose

name she could not give. We are asked to set aside the conviction on the ground that the evidence is not sufficient to justify it. It was, of course, to the interest of Hem Nalini herself and those who were found in the room by the Police to deny that the room was used for the purpose of gambling. Their evidence was, therefore, of an interested character. It also seems somewhat surprising that, as many as five men should have been in the room when the Police visited it. They were Joy Deb Marwari, paramour of Hem Nalini, and four of his friends. There is no suggestion that the petitioner had any grudge against Hem Nalini or any other person implicated. What is suggested is, that he gave information in the hope of obtaining a reward. Re wards, however, are not given, and we understand, except in cases where the information leads to a successful prosecution. On the whole, in the present case, we are not satisfied that the evidence is of such a character as to justify a conviction.

3. The Rule must, accordingly, be made absolute, that conviction and sentences are set aside. The petitioner's bail-band will be unsealed and the fine, if paid, will be refunded.