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**(1929) 05 CAL CK 0035**

**Calcutta High Court**

**Case No:** None

Arjoon Singh and Others

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** May 8, 1929

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 438

**Citation:** AIR 1929 Cal 769

**Hon'ble Judges:** Mukerji, J

**Bench:** Division Bench

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### **Judgement**

Mukerji, J.

This is, reference made u/s 438, Criminal P.C., by the Sessions Judge of Hooghly recommending that the conviction of 15 persons, one Arjoon Singh and 14 others, u/s 4, Act 2 (B.C.) of 1867 and the fine imposed thereunder may be set aside. The case has been argued before me in great detail on behalf of the petitioners as well as on behalf of the Crown.

2. The only question that arises for determination in the case is whether the game that was being played at the time when the petitioners were arrested was "gaming" within the meaning of the Act. The definition in the Act does not really define "gaming," but merely indicates what it is like and excludes wagering or betting on some particular occasion and in particular circumstances and also excludes a lottery." In Hari Singh v. Emperor [1907] 6 C.L.J. 708 it was held that a game of skill is not an offence under the Act but a game of chance is, and that if a game involves a certain amount of skill as well as a certain amount of chance, if the chief element of the game is skill it is not an offence. This decision was passed in 1907. It was incidentally approved of in Bengali Shah v. Emperor [1913] 40 Cal. 702. In Ram Newaz Lal v. Emperor [1914] 15 Cr. L.J. 276 the learned Judges referring to Section 10 of the Act which said:

Nothing in the foregoing provisions of this Act contained shall be held to apply to billiards, whist or any other game wherever played

observed:

The criterion is not whether it is a game of mere chance, but whether it is a game of mere skill and we may point out that the word "mere" is used in legal language in its meaning derived from its Latin origin and imports the meaning of "pure skill"....There is a further point which we wish to set out and which was not apparently discussed in Hari Singh's case and that is that the games of skill referred to in Section 10 obviously refer to a game where there are two parties pitting their skill against each other.

3. The Allahabad High Court dealing with a case u/s 12, Act 3 of 1867 in which Hari Singh's case appears to have been cited held that the words of the Bengal Act were materially different and held that under the other Act the conviction was all right as the game was not a game of mere skill. Bengal Act 2 of 1867, however, was amended by Bengal Act 4 of 1913 by which amongst other alterations Section 10 was repealed and a new section numbered 11-A was introduced which is in these words:

Nothing in this Act shall apply to any game of mere skill wherever played.

4. The result, therefore, is that we are left with the definition of "gaming" such as it is in Section 1 and the provision exempting games of mere skill as contained in Section 11.A. The question as to whether a game is one of pure chance or one in which the element of skill preponderates--considerations which were thought important under the Act as it stood before--are no longer pertinent. We have to see whether the game is covered by what is meant by "gaming"; if it is, it is hit by the Act unless it is a game of mere skill. As regards the definition of "gaming" it has been already said that it is hardly a definition. Etymologically it is equivalent to playing a game. In the Imperial Dictionary gaming is defined as:

to use cards or other instruments accord-to rules with a view to win money or other things waged upon the issue of the contest.

5. In Murray's Dictionary it is defined as "the action of playing at games for stakes." In Wharton's Law Lexicon it is defined as:

the act or practice of playing or following any game, particularly those of chance.

6. In Hari Singh v. Jadunandan Singh [1904] 31 Cal. 542 Stephen, J., incidentally laid stress on the accompaniment of stakes or betting as the distinguishing element of "gaming." In Ram Pertap v. Emperor [1912] 39 Cal. 968 where the meaning of "gaming" pure and simple was in question, it was explained as meaning:

playing at any game for money, which is staked on the result of the game, i.e., which is to be lost or won according to the success or failure of the person who has staked.

7. In the case of Emperor v. Musa [1916] 40 Mad. 556 Oldfield, J., said that the existence of a stake, not the character of the game as one of skill or chance, is regarded as constituting the distinction between playing a game and gaming, and Sadasiva Ayyar, J., observed:

I do not think that the question of chance or skill enters into the connotation of the verb.

8. I entirely agree in this view. In my judgment, all that has to be seen in this case is whether the game that was going on was for money which was staked on the result of the game which was to be lost or won according to the success or failure of the person who has staked, provided of course that it was not a lottery.

9. The version of the game given by the witnesses for the defence, a version by putting forward which the accused obtained sanction or permission to play --is one that is perfectly understandable. That perhaps would amount to a "lottery" as D.W. No. 2 says, but it is not necessary to express any definite opinion on this question as this, according to the prosecution, was not the game that was being played on this occasion. I may, however, mention in passing that I do not understand the sense of this game, because called by whatever- name it may either as "the American sale system" or the "Jullendhur play" it fetches nothing to the principals for whose benefit the game is meant to go on. According to the defence as I understand it, each player has to put in four annas in lieu of which all the players get articles worth ranging from four annas to Re. 1-8-0. It may be that the agents get a commission, but the principals undergo a loss of a good decent sum at each round of the play. I need not dilate further on it as I do not believe that that was the kind of game that was ever seriously pursued.

10. As regards the game which the prosecution allege was being played on the occasion Mr. Basu has made several attempts before me to construct it out of the evidence of the prosecution witnesses, but I must say I am not satisfied that he has been successful. The witnesses examined in the case have not been made to describe the play in detail or at any rate in a sensible way and I entirely agree in the opinion which the D.W. 1 has expressed, viz., that the description as given by the witnesses is "nonsense" and in what the Sessions Judge says namely, that their evidence as recorded is "extremely incomprehensible." It does not signify much that one witness says that on one occasion he lost Rs. 2, for we have to see what was done not on one occasion but on the present occasion. The putting out of the light on the arrival of the police though significant, cannot be held as supplying all lacunae in the evidence. I share in the view which the Sessions Judge has expressed, namely, that the offence has not been proved. The consequence is perhaps regrettable but a case of this sort should certainly have been more adequately tried.

11. It may be noted here that there is on the record the warrant which was issued by the Superintendent of Police for the search that took place. It is not possible to avail of the presumption that the law provides for a case like this, because the warrant has not been marked as a piece of evidence against the accused persons. Moreover, it may again be that such presumption, even if it did arise, has been rebutted by the fact that the presence of the dice, etc., is accounted for by the kind of game which the defence says is the game that used to be played, though for my part I should be very reluctant to accept it.

12. On the whole, I agree in the view which the learned Sessions Judge has taken of the case. I accept the reference and acquit the accused and direct that the fines if paid be refunded.