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Bombay High Court

Case No: None

Pyarelal Gokulprasad APPELLANT

Vs

Emperor RESPONDENT

Date of Decision: Nov. 19, 1931

Acts Referred:

- Bombay Prevention of Gambling Act, 1887 - Section 4(a)

Citation: AIR 1932 Bom 194 : (1932) ILR (Bom) 192 : 137 Ind. Cas. 181

Hon'ble Judges: Beaumont, C.J; Broomfield, J

Bench: Division Bench

Judgement

Beaumont, C.J.
This is an application in revision the accused having been convicted u/s 4(a) of the Bombay Prevention of Gambling Act, Bombay Act IV of 1887, and fined Rs. 80.

2. The facts shortly are that Sub-Inspector Sawant gave three marked coins to a man named Bhagvatiprasad and he saw Bhagvatiprasad go into the accused''s shop. Bhagvatiprasad says that he went to the shop and made bets with the marked coins on Nos. 4, 6 and 8, that being, I understand, a form of betting on American futures. After Bhagvatiprasad came out of the accused''s shop it was raided by the Police and two of the marked coins were found in the accused''s shop.

3. The accused set up a different story as to the way in which he procured the marked coins, but he called no evidence, and the learned Magistrate accepted the evidence of the prosecution and disbelieved the the defence evidence. The evidence was not perhaps very strong but at the same time, in revision, I am not prepared to say that the evidence of Bhagvatiprasad was not sufficiently corroborated by the evidence of Sub-Inspector Sawant and the finding of the marked coins to justify the learned Magistrate in accepting the prosecution story. We cannot interfere in revision with facts, and must find that the prosecution case was proved.

4. The point then arises whether the two marked coins which were found in the accused''s shop are instruments of gaming, because if so, the conviction under'' Section 4(a) of the Act would be justified. "Instruments of gaming" is defined in the Act as including any article used as a subject or means of gaming and any document used as a register or record or evidence of any gaming. I think the words we have to deal with here are "means of gaming." But as we have been referred to a certain number of cases on the meaning of "subject of gaming", Queen-Empress v. Govind 16 B. 283 and Queen Empress v. Kanji Bhimji 17 B. 184 I will only say that I think the construction put upon the words by Mr. Justice Telang in the latter case, if he meant to hold that ''subject of gaming" means anything which is the subject-matter of gaming is too wide. Any object, animate or inanimate may be the subject of gaming. Two persons may have a wager as to the conduct, or personal characteristics, of a third person, and it would be idle suggest that thereby the third person, becomes an instrument of gaming and liable to destruction on the order of a Magistrate There must be some limit on the words I do not think it is necessary for the purposes of this case to say what I think the limit should be, because the actual words under which these marked coins must fall, if they come within the definition at all, are "means of gaming." The words "means of gaming" are very wide, and no doubt money is generally a means of gaming. But it could not be suggested that all moneys are instruments of gaming. If however you find that a particular coin or a particular currency note has in fact been used as means of gaming, then I think that particular coin or that particular currency note does fall within the definition of "instruments of gaming." On the finding of the Magistrate in this case, I think the two marked coins were identified as having been the subject-matter of a bet, and therefore a means of gaming.

5. I think therefore that we cannot interfere with the conviction.

6. The learned Magistrate u/s 8 directed the forfeiture of a sum of Rs. 8 found in the shop. I think, however, that inasmuch as he was imposing a fine of a definite amount it was hardly reasonable to forfeit further moneys of the accused. I think, therefore, that the order of forfeiture of the Rs. 8 must be set aside. Subject to that, the application must be dismissed.

Broomfield, J.

7. I agree. I think it is clear that coins may be instruments of gaming within the definition in Section 3 of Act IV of 1887 if they are used as a means of gaming. In the present case the only evidence that these particular coins were used as a means of gaming is the evidence of the spy Bhagavatiprasad. So that we have to believe Bhagvatiprasad before we hold that these coins were in fact instruments of gaming. That being so, it seems to me that the finding of these coins in the till in the accused''s shop does not amount to very strong corroboration of the spy''s evidence. The presence of the coins in the till would be consistent no doubt with the prosecution case, but also consistent with the accused''s story that these coins were

handed over to him by other persons to whom Bhagvatiprasad had given them and that he had given change. We have pointed out in several recent cases that the definition of "instruments of gaming" is now so wide that the presumption arising u/s 7 on the finding of an article which may be an strument of gaming is a presumption which sometimes requires very little evidence to rebut it. In the present case however there is no evidence to support the accused''s story, and the evidence of the Police Sub-Inspector that he raided the shop within a minute or two after Bhagvatiprasad had entered it is on the face of it inconsistent with the truth of the story old by the accused.

8. The learned Magistrate appears to have relied upon Bhagvatiprasad''s statement that on certain previous occasions he had been to the accused''s show and laid bets with him." I think it is clear that on those previous occasions Bhagvatiprasad was not a spy but an ordinary accomplice, and I do not consider it safe to rely upon what he says about those previous occasions in the absence of any corroboration as to that. It appears to me that the conviction of the accused is really based upon what Bhagvatiprasad says with regard to what happened on this one occasion. I have felt some difficulty in this case and I doubt whether if I had tried it myself I should have convicted the accused. Perhaps if this had been an appeal we should have been disposed to hold that the evidence was not sufficient. However, this is not an appeal, it is an application for revision. As I have pointed out, the story told by the accused can hardly be believed in view of the evinence given by the Sub-Inspector and it is impossible to say that there was no evidence before the Magistrate on which he could legally convict.

9. I agree therefore with the order proposed by the learned Chief Justice.