

Shrimati Sashi
Kanta
v.
Lala Jagmohan
Lal
Kapur, J.

I would, therefore, allow this petition, set aside the order of the learned Magistrate and make the rule absolute. I should have added that the petitioner went to the Court of the Additional Sessions Judge who was of the same opinion as the learned Magistrate.

I direct that the parties should appear in the Court of the Magistrate who is working in place of Mrs. Pahwa on the 29th of March 1954.

REVISIONAL CRIMINAL

Before Khosla and Kapur, JJ.

1954

March. 9th

MOOL CHAND,—*Convict-Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 142-D of 1953

The Public Gambling Act (III of 1867)—Section 5—Warrant issued by Superintendent of Police invested with powers of District Superintendent of Police to issue warrants under section 5—Whether legal—The Police Act (V of 1861)—Section 23—the words “to detect and bring offenders to justice”—whether include power to issue a warrant.

A warrant was issued under section 5 of the Public Gambling Act by the Superintendent of Police, who had been invested with powers of District Superintendent of Police to issue warrants under section 5 of the Public Gambling Act, 1867, and the house of the petitioner was raided in pursuance of this warrant. The question arose whether the warrant had been issued by proper authority.

Held, that there was nothing wrong or illegal in the power which was given by the Chief Commissioner to the Superintendent of Police to issue warrants under section 5 of the Public Gambling Act, 1867, by notification No. F.6(24)/56-Home, dated the 2nd February 1950. In section 1 of the Police Act the District Superintendent of Police so appointed by a State Government is to perform all or any of the duties of a District Superintendent of Police under the Police Act in any district and section 23 gives the police the power to detect and bring offenders to justice and it cannot be said that the power to detect and bring offenders to justice should be circumscribed to offences which come only under the Penal Code. This will be too narrow an interpretation and is not justified by the wording of the section.

Held, that the words "to detect and bring offenders to justice" in section 23 of the Police Act, 1861 are wide enough to include the power to issue a warrant.

(This case was referred to the Division Bench by the Hon'ble the Chief Justice,—vide his Lordship's order, dated 11th November 1953). Case reported by S. Gurdev Singh, 1st Additional Sessions Judge, Delhi with his letter No. 3537/R.K., dated 30th July 1953 under section 438 of the Code of Criminal Procedure, for revision of the order of Shri J. D. Sharma, Magistrate, 1st Class, Delhi, dated 30th December 1952, convicting the petitioner.

The facts of the case are as follows—

In pursuance of the warrants under section 5 of the Public Gambling Act, issued by Pt. Jagan Nath, S.P., City Delhi, the house of Mool Chand, petitioner was raided on the evening of 10th of August 1952, by Bakshi Damodar Dass, Sub-Inspector. In the presence of Maru Ram, (P.W. 2), and one Budh Ram, 28 satta slips, a consolidated satta account and Rs. 43-4-6 in cash were recovered from the petitioner. Mool Chand was consequently prosecuted under section 4 of the Public Gambling Act for keeping a common gambling house and having been found guilty of that offence, he was convicted and sentenced to pay a fine of Rs 100 or in default to undergo rigorous imprisonment for three weeks by an order of Shri J. D. Sharma, Magistrate, 1st Class Delhi, dated 30th December 1952.

The proceedings are forwarded for revision on the following grounds—

The warrants, Ex.P/A, under section 5 of the Public Gambling Act were issued by Pt. Jagan Nath, S.P., City Delhi, on the 10th of August 1952. The contention raised on behalf of the petitioner is that Pt. Jagan Nath, S.P., City had no authority to issue the warrants as under section 5 of the Public Gambling Act, it is only the District Superintendent of Police or a Magistrate who is empowered to do so. It is admitted by the learned P.P. that Pt. Jagan Nath is not the District Superintendent of Police and his official designation is, "S.P., City Delhi". He, however, relied upon notification No. F. 6 (24)/56-Home, dated 2nd February 1950, issued by the Chief Commissioner, Delhi, investing the Superintendent of Police, Delhi City, New Delhi and Rural

with powers of District Superintendent of Police under section 5 of the Public Gambling Act and contends that by virtue of this Notification he was competent to issue the said warrants. After giving my earnest consideration to this matter I have no hesitation in overruling this contention.

The Notification in question runs as follows—

“No. F.6(24)/56-Home :—Under Powers conferred under sec. 1 of the Indian Police Act, 1861, the Chief Commissioner of Delhi is pleased to invest the Superintendent of Police, Delhi City, New Delhi, and Rural with Powers of District Superintendent of Police to issue warrants under section 5 of the Public Gambling Act, 1867.”

It is apparent that the Notification purports to have been made under section 1 of the Police Act, 1861. Section 1 is the interpretation clause wherein the words “District Superintendent” and “District Superintendent of Police” are defined as any person appointed by general or special order of the Provincial Government to perform all or any of the duties of the “District Superintendent of Police” under this Act (Police Act) in any District. Thus it is clear that under section 1 of the Police Act, it was open to the Chief Commissioner, Delhi, to appoint Pt. Jagan Nath as “District Superintendent of Police,” but this appointment could only be “to perform all or any of the duties of a District Superintendent of Police under the Police Act”. The duty or power to issue warrants under section 5 of the Gambling Act is not a power which is conferred on a District Superintendent of Police under the Police Act and thus under section 1 of the Police Act, Chief Commissioner had no authority to invest Pt. Jagan Nath with powers to issue warrants under the Public Gambling Act.

Under section 5 of the Public Gambling Act, the person who is appointed as District Superintendent of Police in accordance with the provisions of the Police Act is competent to issue warrants. By virtue of the Notification in question Pt. Jagan Nath was not invested with any of the functions of the District Superintendent of Police under the Police Act, but he was empowered to act solely as an authority for issuing warrants under section 5 of the Gambling Act, which is quite

distinct from the Police Act. It was, of course open to the Chief Commissioner under section 1 of the Police Act to appoint Pt. Jagan Nath as District Superintendent of Police to perform all or any of the functions which he could do under the Police Act and then by virtue of his holding the office of the District Superintendent of Police he would have automatically got the powers to issue warrants under section 5 of the Public Gambling Act. The Notification, as it stood, did not confer upon Pt. Jagan Nath any of the powers of the District Superintendent of Police under the Police Act but appointed him District Superintendent only for limited purposes of acting under the Gambling Act. Such an appointment for limited purposes of acting under the Gambling Act is not warranted by any provisions of the Public Gambling Act and under section 1 of the Police Act, the Chief Commissioner had no power to make it. The functions of a District Superintendent of Police to issue warrants under the Gambling Act are not his ordinary functions under the Police Act. By virtue of section 5 of the Gambling Act he acts these powers only after his appointment as District Superintendent of Police under the Police Act to perform all or any of the duties of the District Superintendent and not under any other Act.

This discussion leads me to the conclusion that the Notification relied upon by the learned P.P. is ultra vires the Chief Commissioner and does not confer any powers on Pt. Jagan Nath to issue the warrants under section 5 of the Gambling Act. The view taken by the trial court is not correct and the warrants in pursuance of which the premises were searched and the petitioner apprehended were illegal.

Since the warrants in pursuance of which Sub-Inspector Bakshi Damodar Dass acted were not issued by any competent authority, no presumptions under section 6 of the Public Gambling Act can arise against the petitioner and without resort to those presumptions, the evidence on the record is not sufficient to establish his guilt.

Only two non-official witnesses were stated to have been present at the time when the petitioner's house was searched. Out of them Budh Ram was never produced and Maru Ram (P.W. 2), admitted that he had already given evidence in

three or four such cases. He further admitted that on one or two occasions previously he had accompanied the Sub-Inspector on such raids. It is thus clear that he is a stock police witness and it will be highly unsafe to accept his testimony especially when he is a chance witness.

Apart from this the evidence on the record does not establish that the house in fact belonged to Mool Chand or that he was actually occupying the same. As has been observed in *Jamna Pershad v. Emperor* (1) for the purposes of conviction under section 3 of the Public Gambling Act it is not sufficient to say that an accused used a house for the purposes of gambling, but the prosecution must prove that the accused was the owner or occupier or having the use of the place alleged to be kept as gambling house. In the present case the prosecution evidence, even if believed, merely establishes that the petitioner was present in the house which according to the defence evidence is neither occupied nor owned by him. The prosecution evidence cannot be taken as sufficient to make out an offence under section 3 of the Public Gambling Act. It may also be observed that the non-production of Budh Ram, the only other non-official witness of the search, further makes the prosecution case doubtful.

I, therefore, forward the record of the case to the High Court with the recommendation that the conviction and sentence of the petitioner being illegal and based upon insufficient evidence be set aside.

ORDER OF THE HIGH COURT

Petitioner: Nemo.

Respondent: By Shri Bishambar Dayal, State Counsel.

BHANDARI, C. J.—Conflicting decisions have, I understand, been given by different Judges of this Court in regard to the point of law in this case, viz., whether it is within the competence of the Chief Commissioner of Delhi to appoint a police officer as District Superintendent of Police for the purposes of Section 5 of the Public Gambling Act. In view of the diversity of opinion which has manifested itself I am of the opinion that this matter be placed before a Division Bench of this Court.

(1) A.I.R. 1929 Oudh. 151

JUDGMENT

KAPUR, J. This is a recommendation made by the First Additional Sessions Judge of Delhi, dated the 27th of February, 1953, recommending that the conviction of the petitioner Mul Chand be set aside.

Kapur J.

A warrant was issued under section 5 of the Public Gambling Act by Superintendent of Police, Pandit Jagan Nath and the house of the petitioner Mul Chand was raided on the 10th August, 1952, in pursuance of this warrant by Sub-Inspector, Damodar Das and a sum of Rs 43-4-6, was recovered from the petitioner. Mul Chand was prosecuted under section 3 of the Public Gambling Act for keeping a common gaming house and on his conviction was sentenced to a fine of Rs. 100 and in default rigorous imprisonment for three weeks. He took a revision to the Sessions Judge who has made the recommendation for setting aside the petitioner's conviction.

The matter was placed before the Hon'ble the Chief Justice on the 11th November, 1953, and on finding that, there was conflict of opinion in this Court he has referred this case to a Division Bench.

Under section 1 of the Police Act, Superintendent of Police Pandit Jagan Nath has been invested with powers of a District Superintendent of Police, by notification No. F.6(24)/56-Home, dated the 2nd February, 1950, which runs as follows—

“No. F.6(24)/56-Home:—Under Powers conferred under section 1 of the Indian Police Act, 1861, the Chief Commissioner of Delhi is pleased to invest the Superintendent of Police, Delhi City, New Delhi, and Rural with powers of District Superintendent of Police to issue warrants under section 5 of the Public Gambling Act, 1867.”

Section 1 of the Police Act provides—

“District Superintendent of Police shall include any Assistant District Superintendent or other person appointed by

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general or special order of the State Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district "

* * * *

and the duties of a police officer are given in section 23 which provides—

"23. It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned in this section without a warrant, to enter and inspect any drinking shop, gaming house or other place of resort of loose and disorderly characters."

Section 5 of the Public Gambling Act confers on the Police the power to enter and search any premises mentioned in the warrant. The section reads as under—

"5. If the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary has reason to believe that any house, walled enclosure, room, or place is used as a common gaming house,

he may either himself enter, or by his warrant authorise any officer of police not below such rank as the Provincial Government shall appoint in this behalf,

to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room or place;

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and may either himself take into custody, or authorise such officer to take into custody all persons whom he or such officer finds therein, whether or not then actually gaming;

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

and may search or authorise such officer to search all parts of the house, walled enclosure, room, or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search”.

The question to be decided is whether the words in section 23 “to detect and bring offenders to justice” are wide enough to include the power to issue a warrant. In Criminal Revision 80-D of 1953, Falshaw J. had occasion to deal with this matter and he was of the opinion that the words were wide enough to cover the issuing of a warrant and the learned Judge therefore observed—

“It is obviously a general duty of the Police under the Act to enforce not only the Indian Penal Code but also all the various special Acts relating to offences

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such as the Public Gambling Act, and where in any particular Act the District Superintendent of Police is given certain powers I cannot see anything at all to prevent the Chief Commissioner under the relevant portion of section 1 of the Police Act from investing in a particular police officer powers of a District Superintendent of Police for the purpose of that particular Act. In fact in my opinion this was what the provision in section 1 is intended for."

The Hon'ble the Chief Justice on a case being stated to him by Mr. Gurdev Singh in Criminal Revision No. 61-D of 1953 agreed with the recommendation that the Chief Commissioner had not the power to issue such a notification.

As I read the provisions of the various sections I am of the opinion that there is nothing wrong or illegal in the power which was given by the Chief Commissioner. In section 1 of the Police Act the District Superintendent of Police so appointed by a State Government is to perform all or any of the duties of a District Superintendent of Police under the Police Act in any district and as I have said section 23 gives the police the power to detect and bring offenders to justice and it cannot be said that the power to detect and bring offenders to justice should be circumscribed to offences which come only under the Penal Code. This will be too narrow an interpretation and is not justified by the wording of the section. I respectfully agree with the view taken by my brother Falshaw J. and with due deference we are unable to agree with the view of the Hon'ble the Chief Justice as the provisions of section 23 of the Police Act do not seem to have been brought to his notice.

The next point which arises in this case is whether there is sufficient evidence for the conviction of the petitioner. After going through the record we find there is not sufficient evidence and ordinarily we would have been reluctant to go into

the question of law in view of the findings on questions of fact, but the matter having been referred to us we are constrained to give the opinion as to the legality of the notification. The recommendation is accepted on the point of there being no evidence to support the conviction. The rule is, therefore, made absolute and the petitioner acquitted. The fine, if paid, shall be refunded.

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KHOSLA, J. I agree.

CIVIL REFERENCE

Before Khosla and Kapur, JJ.

ORIENTAL GOVERNMENT SECURITY LIFE INSURANCE CO., LTD,—Petitioner

versus

THE NEW DELHI MUNICIPALITY,—Respondents

Civil Reference 16 of 1953

1954

The Punjab Municipal Act (III of 1911)—Section 3(2)(b)—Whether modified by the provisions of the Delhi-Ajmer Merwara Rent Control Act—Municipal Committee whether can for purposes of taxation increase the annual value of the house beyond the standard rent—Expression “reasonably be expected to let” in section 3(1)(b) of the Act, meaning of—

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Held, that the expression “reasonably be expected to let” means the amount which a landlord can recover under the law. It does not cover the case of a landlord who chooses to break the law and receive a higher rent. Such amount cannot be said to be reasonably recoverable. Therefore, it is clear that the Rent Control Act does modify the definition of the “annual value” as given in the Punjab Municipal Act.

Corporation of the Town of Calcutta v. Ashutosh De (1) and Ghulam Ahmed Rogay v. Bombay Municipality (2) referred to.

The case reference made by Shri H. S. Dhillon, the Additional Collector, Delhi, dated 26th November 1952, under Section 84(2) of the Punjab Municipal Act.

(1) A.I.R. 1927 Cal. 659
(2) A.I.R. 1951 Bom. 320.