

CRIMINAL APPELLATE

Before Khosla and Falshaw, JJ.

THE STATE,—Appellant

*versus*PARS RAM *alias* PARSA;—Respondent

Criminal Appeal No. 449 of 1953

Public Gambling Act (III of 1867)—Section 5—Warrant issued under—Who can execute—Punjab Government Notification, dated 1st September 1952—Interpretation of.

1954

August, 18th.

Punjab Government Notification, dated 1st September, 1952, reads:

“The Governor of the Punjab is pleased to declare that in all towns where there is a Sub-Inspector or Assistant Sub-Inspector, no officer below the rank of Sub-Inspector or Assistant Sub-Inspector and in towns where there is no Sub-Inspector, Assistant Sub-Inspector or Police Officer of higher rank, no officer below the rank of Head Constable shall execute warrants issued under section 5 of the Public Gambling Act III of 1867.”

Held, that the plain meaning of the notification is that in a town where there are both Sub-Inspectors and Assistant Sub-Inspectors, the Superintendent of Police can issue a warrant to either of these officers for execution and not only to the Sub-Inspectors.

State appeal against acquittal of the Respondent from the order of Shri Chuni Lal, Additional District Magistrate, Ludhiana, dated the 8th June, 1953, reversing that of Shri Jhangi Ram Dhingra, Magistrate II Class, Ludhiana, dated the 17th January, 1953.

HAR PARSHAD, Assistant Advocate-General, for Appellant.

K. L. JAGGA, for Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J. The respondent Parsa was prosecuted in the Court of a Second Class Magistrate at Ludhiana and convicted under section 3 of the

Public Gambling Act and he was sentenced to pay a fine of Rs. 30 or in default to undergo two weeks' imprisonment. He was, however, acquitted in appeal by the learned Additional District Magistrate and the present appeal has been filed by the State against his acquittal.

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The facts of the case are that Assistant Sub-Inspector Kailash Nath received information that Pars Ram was using a *baithak* occupied by him in the town of Ludhiana as a common gaming house and he therefore applied to the Superintendent of Police who issued the warrant, P. G., under section 5 of the Act on the 9th of October, 1952, authorising the Assistant Sub-Inspector to carry out a raid. This was done on the following day, the 10th of October, when Labh Singh, P.W., was given a two-rupee note and instructed to place a bet of one rupee on No. 37 and annas eight on No. 73. He did so and then the Police party came on his signal, a slip being recovered from the person of Pars Ram on which were written the above numbers with the sums mentioned against them, and also the note supplied by the Police to Labh Singh, from whom eight annas received by him as change was taken. A search of the premises led to the recovery of a further sum of money and also some more slips which clearly were being used for the form of gambling known as *darra*. Five witnesses including the Assistant Sub-Inspector supported this story and while the accused denied his guilt he offered no explanation of the prosecution evidence beyond suggesting that the case was due to enmity, and he did not produce any defence evidence.

On the face of it there does not appear to be any reason whatever for not accepting the prosecution story at its face value and holding that the accused was using the *baithak* in question as a

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gaming house, and in fact Pars Ram was not acquitted because the learned Additional District Magistrate thought that the facts had not been proved. The ground on which he was acquitted turns on the interpretation of a Punjab Government Notification, dated the 1st of September, 1952, which reads:—

“The Governor of the Punjab is pleased to declare that in all towns where there is a Sub-Inspector or Assistant Sub-Inspector no officer below the rank of Sub-Inspector or Assistant Sub-Inspector and in towns where there is no Sub-Inspector, Assistant Sub-Inspector or Police officer of higher rank, no officer below the rank of Head Constable shall execute warrants issued under section 5 of the Public Gambling Act III of 1867.”

It is not in dispute that in the town of Ludhiana there are a number of officers of both the rank of Sub-Inspector and Assistant Sub-Inspector, and the learned trial Magistrate interpreted the Notification as meaning that in towns where there are both Sub-Inspectors and Assistant Sub-Inspectors the Superintendent of Police can issue warrants under section 5 of the Act to officers of either of these ranks for execution, and there can in fact be no doubt whatever that the notification is capable of this interpretation. The learned Additional District Magistrate, however, apparently mainly on the strength of an appellate judgment of the Sessions Judge of Ludhiana which was shown to him but has not been placed on the file, held that the meaning of the Notification was that if there is a Police officer of the rank of a Sub-Inspector in

a town a warrant under section 5 must necessarily be issued to him for execution, and that Assistant Sub-Inspectors only come into the picture where there are no senior officers in a town. The argument appears to have been that the intention of the Notification clearly was that warrants under section 5 were to be executed by an officer of the highest rank available in any particular town, but if that was indeed the intention I fail to understand why it was not more clearly stated. As the Notification stands the plain meaning appears to me to be that in a town where there are both Sub-Inspectors and Assistant Sub-Inspectors the Superintendent of Police can issue a warrant to either of these officers for execution, and I therefore consider that the learned Additional District Magistrate and the learned Sessions Judge whose view he followed were wrong in their interpretation. I would accordingly accept the appeal of the State and restore the conviction of Pars Ram under section 3 of the Public Gambling Act and also the sentence imposed on him of a fine of Rs. 30 or in default two weeks' rigorous imprisonment. He must accordingly surrender to his bail bond which will be cancelled if the fine is paid, otherwise he must be sent to prison to serve the sentence in default.

KHOSLA, J.,—I agree.

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