APPELLATE CRIMINAL.

Before Nasim Ali J.

PHANI BHOOSHAN KUMAR

1936
Aug. 7.

v.

EMPEROR.*

Gaming—Instruments of gaming connected with horse-racing, when evidence of common gaming house—Calcutta Police Act (Beng. IV of 1866), ss. 3, 47.

Records written out for the purpose of facilitating betting upon a horse-race not within the race-course with licensed book-makers or by means of a totalisator are instruments of betting and are evidence to show that the place was used as a common gaming house, although actually no betting was going on at the place at the time of their seizure.

Hari Charan Banerjee v. *Emperor* (1) distinguished.

Adams v. *Emperor* (2) referred to.

APPEAL by the accused.

The facts of the case and the arguments in the appeal are sufficiently stated in the judgment.

Narendra Kumar Basu and *Maneendra Nath Mukherji* for the appellant.

The Deputy Legal Remembrancer, Khundkar, and *Anil Chandra Ray Chaudhuri* for the Crown.

NASIM ALI J. The appellant has been convicted by the Fourth Presidency Magistrate of Calcutta under s. 44 of the Calcutta Police Act (Bengal IV of 1866) and sentenced to pay a fine of Rs. 400, in default one month's rigorous imprisonment.

*Criminal Appeal, No. 480 of 1936, against the order of H. K. De, Fourth Presidency Magistrate of Calcutta, dated April 25, 1936.

(1) [1936] A. I. R. (Cal.) 355. (2) (1935) I. L. R. 62 Cal. 1093.

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The accused was charged with keeping a common gaming house in the office of the Deputy Accountant-General, Posts and Telegraphs, situate at No. 7, Kaila Ghat Street, and allowing persons to gamble on race horses on Bombay races for gain of money at about 1 p.m. on March 28, 1936. He is an assistant in that office. On March 18, 1936, at about 1 p.m., while he was working at his table in the office room, Inspector R. N. Gupta of the Calcutta Police searched the appellant's person and table on the authority of a search warrant issued by the Deputy Commissioner of Police, under s. 46 of the Act and seized three slips of paper, Exs. 2, 3 and 4, a slip pad Ex. 5 and a leather purse containing Rs. 30/4/1½ p. There is no evidence in this case to show that the appellant was actually betting in his office at the time. The prosecution, however, relies on Exs. 2 and 3, under s. 47 of the Act, as evidence to show that the room was being used by the appellant as a common gaming house. In order that an article may be evidence under that section, it must be an instrument of gaming, *i.e.*, an article used as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming. Gaming means wagering or betting except wagering or betting upon a race horse, when such wagering or betting takes place on the day on which such race is to be run, in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose and with licensed book-makers, or by means of a totalisator, as defined by s. 14 of the Bengal Amusement Tax Act, 1922.

Exhibits 2 and 3 contain the names of certain horses and the amount of betting to be placed on those horses; Ex. 2 refers to horse races at Bombay and Ex. 3 refers to horse races at Bombay and Taliganj as well. Both are dated March 28, 1936. It is not disputed that the betting referred to in these two documents did not take place within the race course

enclosure with any licensed book-maker or means of a totalisator.

The next question for consideration is whether these slips can be considered as instruments of betting. The learned advocate for the appellant relied upon a decision of this Court in the case of *Hari Charan Banerjee* v. *Emperor* (1) and contended that in that case this Court held that slips similar to Exs. 2 and 3 were not instruments of gaming and were taken as not evidence of an incriminating nature. In that case, however, Jack J. held that the slips might have been intended for wagering or betting within the race course. In the case before me, however, the two slips Exs. 2 and 3 clearly indicate that they were written out for the purpose of facilitating betting not within the race course with licensed book-makers or by means of a totalisator. The learned counsel for the Crown relied upon a decision of a Division Bench of this Court in the case of *Adams* v. *Emperor* (2). In that case betting slips similar to Ex. 3 were held to be instruments of gaming, as they were used for the express purpose of facilitating betting operations which were in progress at the time when the police raided the house and seized them. It is true that in the present case Exs. 2 and 3 were seized at a time when betting operations were not going on, but it is clear from these two documents that they were written records of illegal betting. Further it does not appear that these two documents were written for facilitating betting operations in any place other than the room where they were seized. They are therefore evidence under s. 47 of the Act to show that the room in question was being used as a common gaming house.

The defence of the appellant, however, is that he never indulged in betting on race horses and that he never received any bets from anybody. The case of

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the appellant is that immediately before the police arrived at the place, P. W. 3, Jamani, told him that he was going upstairs to get a pension commutation form for commuting his pension and left Exs. 2 and 3, which he said contained commutation calculations. Jamani in his evidence admitted that he had been to the accused that day and told him that he would commute his pension. He, however, says that he did not give any papers to him. D. W. 5 says that some slips of paper were given by Jamani to the appellant on that day. He, however, could not say what those papers were. He is working with the appellant at the same table for 24 years. The learned Magistrate has not believed his evidence and I see no reason to differ from him.

I therefore agree with the learned Magistrate that Jamani did not make over Exs. 2 and 3 to the appellant. The two documents clearly show that the appellant was using his office as a gaming house. The appellant has therefore been rightly convicted.

In view of the facts and circumstances of the case I am, however, of opinion that the ends of justice would be sufficiently met if the appellant is fined Rs. 200. The excess fine must be refunded to him.

Subject to the above modification in the sentence, the appeal is dismissed.

Out of the fine Rs. 20 will go to the Court Inspector and Rs. 40 to the complainant.

Sentence reduced.

A. A.