APPELLATE CRIMINAL.

Before Mr. Justice Shephard and Mr. Justice Davies.

QUEEN-EMPRESS

v.

BHASHYAM CHETTI. *

1896. January 15.

Madras City Police Act—Act III of 1888, *ss.* 42, 45, 47.

Where a Magistrate has recorded that an accused person has pleaded guilty, an affidavit to the contrary sworn to by the accused is not admissible in evidence on revision by the High Court.

In Madras City Police Act III of 1888, s. 47, the words "all or any of the other articles seized" include money or securities for money seized by the police under s. 42. The Magistrate is not bound to hold any enquiry as to whether the money and other things seized were used or intended to be used for the purpose of gaming.

APPEAL against the sentence of Sultan Mohidin Sahib, Presidency Magistrate, Black Town, and petition under sections 435 and 439, Criminal Procedure Code, praying the High Court to revise the order of the said Magistrate in Calendar Case No. 19476 of 1895 directing the forfeiture of certain jewels and money found, and seized under section 45 of the Madras City Police Act.

In this case the accused were charged before Sultan Mohidin Sahib, Presidency Magistrate, under section 45 of the Madras City Police Act III of 1888.

The Magistrate recorded that both the accused pleaded guilty and fined the first accused Rs. 300 and the second accused Rs. 100. He further ordered that certain of the jewels and the money found should be forfeited and the cards destroyed.

The first accused filed this petition to revise the proceedings of the Magistrate and tendered in evidence an affidavit executed by himself setting forth that he did not plead guilty.

The following are the material sections of the Act referred to :—

Section 42.—If the Commissioner has reason to believe that any enclosed place or building is used as a common gaming house, he may by his warrant give authority to any Police officer above the rank of a constable to enter, with such assistance as may be found necessary, by night or by day and by force if necessary, any such enclosed place or building and to arrest all persons found therein, and to seize all instruments of gaming and all moneys and securities for money and articles of value reasonably suspected to have been used or intended

* Criminal Appeal No. 618 of 1895, and Criminal Revision Case No. 571 of 1895.

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to be used for the purpose of gaming which are found therein, and to search all parts of such enclosed place or building and also the persons found therein.

Section 45.—Whoever opens, keeps, or uses or permits to be used any common gaming house or conducts or assists in conducting the business of any common gaming house, or advances or furnishes money for gaming therein, shall be liable on conviction to fine not exceeding five hundred rupees, or to imprisonment not exceeding three months, or to both.

Section 47.—On conviction of any person for keeping a common gaming house, or being present therein for the purpose of gaming, all the instruments of gaming, found therein may be destroyed by order of the Magistrate, and such Magistrate may order all or any of the other articles seized, or the proceeds thereof, to be forfeited.

Krishnama Chariar for (appellant) petitioner.

The Crown Prosecutor in support of the conviction and order.

JUDGMENT.—We cannot admit the affidavit of the petitioner which it is sought to use for the purpose of showing that he did not plead guilty. If there was any mistake about the matter, it is the Vakil and not the client who ought to have made an affidavit.

We cannot say that the sentence is excessive and must therefore dismiss the appeal.

With regard to the articles forfeited it is argued that money and securities for money being specially mentioned in section 42 of the Act cannot be intended to be denoted by the term 'articles' used in section 47. In our opinion, however, the phrase "all or any of the other articles seized" is large enough to cover money or securities for money when seized. The narrow construction which it is sought to put on section 47 would have the effect of making the seizure of money under section 42 an useless ceremony.

It is then said that the Magistrate ought to have enquired as to whether the money and other things seized were used or intended to be used for the purpose of gaming. Section 47, however, under which the Magistrate is empowered to order a forfeiture, does not require that he should make any such enquiry. It is sufficient that the articles have, in fact, been seized by the Commissioner of Police under circumstances of reasonable suspicion entertained by him.

The Magistrate has a discretion in the matter, and, while he is entitled to presume that the action of the Police authorities has been regular, he would, no doubt, not order a forfeiture in a case where he had reason to believe that the seizure had been irregularly made. In the present case there does not appear to have been any ground for the Magistrate doubting the correctness or regularity of the proceedings of the Police. We must dismiss the petition.