NARANNA NAIDU v. VENKATA-RAMAYYA.

PAKENHAM WALSH J.

aside and this appeal allowed. The plaintiff will be well advised in his own interest to take proper advice as to whether any of these lands in the possession of the alienees can be recovered for the temple and if so to take the necessary steps.

In the circumstances of the case, as there is a question of law and as the appeal is partly due to the fact that the lower Court did not at all notice that section 59 (2) mentions only maths and not excepted temples, we direct that each side shall bear its own costs both here and in the lower Court.

G.R.

APPELLATE CRIMINAL.

Before Mr. Justice Cornish.

1934, September 5.

IN RE P. R. SUBBIER AND SIX OTHERS (ACCUSED), PETITIONERS.*

Madras City Police Act (III of 1888), *secs.* 6, 42, *and* 47—*Search warrant issued by Deputy Commissioner—Validity of, in absence of proof that power to issue same has been deputed by Commissioner—Sworn information not required—Faulty description of premises not fatal to validity of warrant, if description sufficient to identify—Forfeiture under sec.* 47.

By virtue of section 6 of the Madras City Police Act (III of 1888), a Deputy Commissioner of Police has power to issue a warrant under section 42 of that Act. The power is conferred on the Deputy Commissioner by the Act and not by an order of the Commissioner. Such a warrant issued by the Deputy Commissioner is therefore valid even in the absence of proof that the power to issue the same had been deputed to him by the Commissioner.

Forsyth v. *Wilson*, (1893) I.L.R. 20 Calc. 670, followed.

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* Criminal Revision Case No. 965 of 1933.

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Section 42 of the Madras City Police Act (III of 1888) does not require a sworn information as a condition to the issue of a warrant. It is sufficient that the warrant should state that the officer who issued it has done so on information laid before him. It is not necessary for him to state that he had reason to believe the information.

Walvekar v. *Emperor,* (1926) I.L.R. 53 Calc. 718, distinguished.

A faulty description of the premises by number or locality is not fatal to the validity of a warrant issued under section 42 of the Act, if the description is nevertheless sufficient to identify the premises named in the warrant.

Emperor v. *Krishna Rutna Dalvi,* (1904) 6 Bom. L.R. 52; *Emperor* v. *Abasbhai,* (1925) I.L.R. 50 Bom. 344; and *Emperor* v. *Jhunni,* (1905) 2 Crl. L.J. 243, referred to.

Before ordering forfeiture under section 47 of the Madras City Police Act (III of 1888), the Magistrate must be satisfied that the money or other articles seized were used or intended to be used for gaming purposes.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Second Presidency Magistrate, Georgetown, Madras, in Calendar Case No. 19681 of 1932.

C. Brooke Elliott, S. V. Shenoy, and *K. V. Raghavan* for petitioners.

K. V. Ramaseshan for *Crown Prosecutor* (*T. S. Anantaraman*) for the Crown.

Cur. adv. vult.

ORDER.

The petitioners were convicted of offences under the Madras City Police Act, sections 45 and 46: accused 1 of keeping or permitting to be kept and accused 2, 3, 4 and 5 of using a common gaming house, and accused 6 and 7 of being found gaming or present for the purpose of gaming in a common gaming house.

The premises in question were occupied by accused 1 who conducted a printing business there, known as the All India Printing Works, and in the course of his business printed race books and other racing intelligence. Accused 4 and 5 were clerks employed by him.

The evidence is that on the day when the premises were raided by the police a number of persons were found on and around the pial of the building; that accused 2 and 3 were on the pial taking betting slips from accused 6 and 7; and that betting slips were found on these accused persons. These betting slips were pieces of paper with the names of race horses written thereon and against these names were written sums of money, obviously indicating that these sums had been betted upon the particular horses. Immediately within the building, in a room used as an office of accused 1, were discovered accused 4 and 5 seated at two tables on which were found some more betting slips and some lists of acceptances for the Mysore races which were in progress on that day. In the unlocked drawer of the table at which accused 4 was seated was found a sum of Rs. 187. The drawer of the table at which accused 5 was sitting was locked. As the key was not forthcoming the drawer was forced open and a sum of Rs. 416-1-0 was found therein. These moneys, as well as the betting slips, lists of acceptances, and some other papers were seized by the police. Mahazars were drawn up and attested by two witnesses who had been taken to the premises for that purpose by the police. The point was raised whether the provisions of section 103, Criminal Procedure Code, governed a

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search and seizure of property made in pursuance of a warrant issued under section 42 of the Madras City Police Act. It is not necessary for the purpose of this case to decide it, because I am satisfied that, assuming section 103 applied, the requirements of that section were substantially fulfilled.

The principal arguments of the learned Counsel for the petitioners have been directed against the validity of the warrant.

The warrant which was issued on 11th June 1932 is dated 11th June 1933. That, however, is a mere slip of the pen. It states :

"Whereas information has this day been laid before the undersigned Deputy Commissioner of Police and Justice of the Peace for the Town of Madras, that a common gaming house is kept on the premises occupied by Subbayyer, Proprietor, All India Printing Works, at No. 239, Ayya Pillai Street, George-town, Madras, etc."

The warrant is signed by Mr. Wilkes, a Deputy Commissioner of Police.

The authority of the Deputy Commissioner to issue the warrant has been contested. It was contended that the power to issue a warrant is vested by section 42 of the Police Act in the Commissioner of Police, and that there must be proof, which is wanting here, that the power has been deputed by the Commissioner to the Deputy Commissioner. The question depends on the construction of section 6 of the Act. This provides that the Government may from time to time appoint one or more Deputies or Assistants to the Commissioner, who shall be competent to perform any of the duties or exercise any of the powers assigned to that officer as Commissioner under his orders. I think that the section

authorizes a Deputy Commissioner to exercise the powers given to the Commissioner by the Act, but that the Deputy must exercise those powers subject to the orders of the Commissioner. The powers are conferred on the Deputy by the Act and not by an order of the Commissioner, though the Deputy is subject to the control of the Commissioner. This was the construction put on substantially the same provision of the Calcutta Police Act in *Forsyth* v. *Wilson*(1). I accordingly hold that it was competent to the Deputy Commissioner to issue the warrant in the present instance.

It was next contended that the warrant is bad because it does not on the face of it show a legal foundation for its issue. Section 42 of the Police Act says :

"If the Commissioner has reason to believe that any enclosed place or building is used as a common gaming house he may issue his warrant."

The warrant in the present instance does not state that the Deputy Commissioner had "reason to believe", but that "information has been laid" before him, that the premises were used as a common gaming house. Apparently the warrant follows the form prescribed by Schedule V of the Code of Criminal Procedure for a search warrant issued by a Court under section 96 of the Code. Section 96 has nothing to do with the power exercisable by a Deputy Commissioner under section 42 of the Police Act. But a Deputy Commissioner is *ex officio* a Justice of the Peace, by virtue of section 8 of the Act, for the prevention of offences and for the performance of the

(1) (1893) I.L.R. 20 Calc. 670.

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duties assigned to the Commissioner by the Act. And it is established that no Justice of the Peace can proceed without an information; but, unless the statute so requires, the information need not be in writing nor upon oath: see *Reg* v. *Thomas Millard and Henry Millard*(1). Section 42 of the Madras Police Act does not require a sworn information as a condition to the issue of a warrant. It is sufficient, therefore, in my opinion, that the warrant should state, as in the present instance, that the Deputy Commissioner has issued the warrant on information laid before him. It is not necessary for him to state that he had reason to believe the information. The decision in *Walvekar* v. *Emperor*(2), on which Mr. Brooke Elliott relied, rests on the special facts of the case. The warrant there was held to be defective because it appeared on the face of it that the Commissioner had not complied with the formalities required by section 46 of the Calcutta Police Act for the issue of a warrant. There is no apparent defect on the face of the warrant before me.

Lastly, it has been objected to the validity of the warrant that it was misdirected. The warrant authorizes the entry of the premises occupied by the first accused "at No. 239, Ayya Pillai Street, Georgetown, Madras". It is contended that this is a thoroughly erroneous description of the premises wherein the first accused carries on the All India Printing Works, the business being carried on at No. 19/3, Venkatachalla Mudali Street, Park Town, Madras. A warrant will, of course, only authorize the entry

(1) (1853) 6 Cox. Crl. C. 150. (2) (1926) I.L.R. 53 Calc. 718.

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of the premises named in the warrant. Some cases have been cited. The principle to be deduced from them is that a faulty description of the premises by number or locality is not fatal if the description is nevertheless sufficient to identify the premises named in the warrant: see *Emperor* v. *Krishna Rutna Dalvi*(1), *Emperor* v. *Abasbhai*(2) and *Emperor* v. *Jhunni*(3). The question is whether the description in the warrant sufficiently identified the building to be entered. It is proved by the evidence that the door of the particular premises bears two numbers, of which 19/3 is the Municipal number and 239 the Census number. It is also proved that though the street in which the premises are situate has been named Venkatachalla Mudali Street by the Municipality, it is popularly known as Ayya Pillai Street. In fact, the alternative name is recognized by the Post Office, and arrangements have been made in the Postal sorting department for the delivery of letters addressed to Ayya Pillai Street in Venkatachalla Mudali Street. In these circumstances I think that the premises are sufficiently described in the warrant. Georgetown and Park Town are adjoining districts, and nothing turns on the warrant placing the premises in the one rather than in the other. In my judgment there is no substance in the objection to the warrant on the ground of misdescription.

The warrant and the seizure being good, the presumption arises, under section 43 of the Police Act, from the discovery of the instruments of gaming, viz., the betting slips, on the premises and

(1) (1904) 6 Bom. L.R. 52. (2) (1925) I.L.R. 50 Bom. 344.
(3) (1905) 2 Crl. L.J. 243.

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on the persons of accused 2, 3, 6 and 7, that the place was being used as a common gaming place and that the persons found therein were present for the purpose of gaming. "Gaming", it should be observed, is made by Madras Act XIII of 1929 to include betting on a horse-race, and "instruments of gaming" to include any documents used as a record or evidence of gaming. The learned Counsel has argued that there was no evidence to support the conviction of accused 1 who was not in the premises when they were raided. But I think that the facts that his clerks were found in his office with betting slips and money, and that people were engaged in betting on the pial of the building, afforded evidence on which the Magistrate could find that the first accused was keeping the place or permitting it to be kept as a common gaming house.

I have already referred to the fact that when the office room was raided a sum of Rs. 187-4-1 was found in the open drawer of the table at which the fourth accused was seated, and that Rs. 416-1-0 were found on forcing open the locked drawer of the other table. All this money has been declared forfeited by the Magistrate under section 47 of the Act. A warrant authorizes the seizure of all monies "reasonably suspected to have been used or intended to be used for the purpose of gaming" which are found on the premises. I think that the Police were quite justified in seizing the money. But the Act does not contemplate forfeiture following seizure as a matter of course. Section 47 says that on conviction the Magistrate may order all instruments of gaming to be destroyed, and all or any of the

other articles seized (which would include money), to be forfeited. But before ordering forfeiture the Magistrate must be satisfied that the money or other articles seized were used or intended to be used for gaming. In *Lachmi Narain* v. *Emperor*(1) BUCKNILL J. expressed the opinion that private property of an individual found in a common gaming house should not be forfeited unless there were clear grounds for thinking that it was used or intended to be used for gaming purposes. I agree with that view. The learned Magistrate was evidently impressed by the fact that on the tables were found publications of racing intelligence and betting slips. But it does not seem to have been brought to his notice that the bets covered by the betting slips found on the two tables only amounted to Rs. 100, a sum far below the amount of money found in the two drawers. This circumstance, taken with the fact that the sum of Rs. 416 was kept in a separate locked drawer in the office where the first accused carried on the legitimate business of printer, raises a fair inference that this particular money was not money used for betting. I think that the sum of Rs. 416-1-0 ought not to have been forfeited, and I direct that it be refunded to the first accused. Otherwise, this petition fails and is dismissed.

K.W.R.

(1) A.I.R. 1924 Pat. 42.