

1905  
September 8.

*Before Mr. Justice Richards.*

EMPEROR v. ABDUS SAMAD.\*

*Act No. III of 1867 (Gambling Act), sections 4, 5 and 6—Common gaming house—Evidence—"Credible information."*

*Held* that when a house is searched by the Police on information that it is a common gaming house, the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming house notwithstanding that the warrant under which the search is conducted is defective, though the finding of such articles may not be evidence to the extent mentioned in section 6 of Act No. III of 1867.

*Held* also that the words "credible information" as used in section 5 of Act No. III of 1867 have not the same meaning as "credible evidence." The "credible information" there mentioned need not be in writing.

A POLICE Sub-Inspector gave oral information to a Magistrate of the first class that a certain house kept by one Sita was suspected to be a common gaming house. The Magistrate issued a warrant under section 5 of Act No. III of 1867 for the search of the house. The search was carried out and persons were found gambling in the house, and certain instruments of gaming were found there also. Amongst the persons convicted as a result of the action of the police was one Abdus Samad, who applied in revision to the Sessions Judge to set aside his conviction and sentence. The Sessions Judge was of opinion that merely oral information that a house was suspected to be a common gaming house could not be "credible information" within the meaning of the Act. The issue of search warrant was, therefore, illegal, and the finding of instruments of gaming in the house had no evidentiary value. The Sessions Judge accordingly reported the case to the High Court recommending that the conviction and sentence might be set aside.

The following order was passed:—

RICHARDS, J.—In this case the applicant was fined Rs. 15 and in default one week's rigorous imprisonment under section 4 of the Gambling Act, No. III of 1867. The case has been submitted to this High Court by the Sessions Judge with a recommendation that the conviction should be set aside, on the ground that the Magistrate when he issued a warrant under section 5 of the same Act had no "credible information" that the house in which the accused was found was a common

\* Criminal Reference No. 496 of 1905.

gaming house within the meaning of the Act. The learned Sessions Judge seems to think that unless there was a legal entry into the house by some person under the provisions of section 5 and seizure of gaming instruments such as cards, dice, &c., the latter could not be used as evidence at all against the accused. I think he is quite wrong in this, and that the finding of the gaming instruments was admissible in evidence. They would not perhaps be evidence to the extent mentioned in section 6, which throws on the accused the burden of explaining their presence and proving that the house was not a common gambling house, but they are nevertheless evidence. I think that if it was proved that a large number of persons were assembled in a man's house which was furnished with the instruments of gaming, and that the owner of the house was found in possession of a special pot or vessel containing money, which he took pains to conceal from the police, the Court might infer that the owner was using the house as a common gaming house. It cannot be contended that if, instead of a pot, a book was found containing entries of the amounts paid to the owner by the gamblers, the book would not be evidence. Of course the pot was very different to a book; but this is a matter of the weight of evidence, not its admissibility. As to the meaning of the words "credible information" in section 5, I think each case must depend on its own circumstances. The expression "information" appears in the Criminal Procedure Code, including section 110, and has received a wide interpretation. The omission of the word "credible" is immaterial, and no Magistrate should act on incredible information. I am clearly of opinion that there need be no information in writing. Suppose a Magistrate was informed by a Police Officer whom he knew to be a careful and efficient officer that the latter from inquiries had ascertained that a large number of persons were in the habit of congregating at a certain house and that play took place in the house, that from the number and class of persons frequenting the house he believed that their presence there could not be explained as a meeting of friends to have a game of cards or dice, and that he therefore suspected the owner got compensation for the use of the house, and supposing

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the Magistrate believing this report issued a warrant, could it be said that his reason to believe that the house was used as a common gaming house was not founded on "credible information?" This is in effect what happened in the present case. "Credible information" cannot mean the same thing as "credible evidence." If it did there would be very little necessity for putting into force the provisions of section 5, or occasion to rely on section 6, for actual evidence of persons who had seen the owner of the house taking or receiving money would be forthcoming. I think the Legislature intended by the provisions of section 5 as far as possible to prevent a man's house being raided without due cause, and I think that Magistrates should not lightly issue a warrant, and that if they have the least reason to doubt the source of their information they should make careful inquiry before entering or allowing a person's house to be entered. If before issuing a warrant the Magistrate was to institute in each case an inquiry and wait until the result of that inquiry showed that "there was no reasonable doubt that the house was used as a common gaming house," section 5, if not the whole Act, would be a dead letter; yet this is what the learned Sessions Judge suggests should be done. The Act was passed to meet what was considered a grave public necessity, and so long as it remains law it should be administered, the Magistrates of course taking due precaution that its provisions are not abused. For these reasons I do not think I should interfere with the conviction or sentence. Let the record be returned.

*Before Mr. Justice Richards.*

EMPEROR v. CHEDI.\*

1905  
October 20.

*Criminal Procedure Code, sections 191, 537 — Procedure—Omission of Magistrate to inform accused of his right to be tried by another Court—Illegality.*

The omission on the part of a Magistrate to inform an accused person to whom the provisions of section 191 of the Code of Criminal Procedure are applicable of his right to have the case tried by another Court amounts to more than a mere irregularity to which section 537 of the Code will apply; but a Magistrate taking cognizance of an offence under section 190, clause (c),

\* Criminal Revision No. 520 of 1905.