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Before Mr. Justice Tudball.

EMPEROR *v.* HARGOBIND.*

Act No. III of 1867 (Public Gambling Act), sections 3 and 4—Presumption—Warrant not in accordance with provisions of Act.

Held that a warrant authorizing the search of any house which the police officer to whom it has issued might think proper to search was not a legal warrant within the provisions of the Public Gambling Act, 1867.

One Hargobind was convicted by a Magistrate of the first class under sections 3 and 4 of the Public Gambling Act, 1867, and fined Rs. 30. Against this conviction and sentence Hargobind applied in revision to the High Court. On this application two pleas were raised. The first was that the warrant under which the alleged public gaming house was searched was entirely illegal, the warrant being a general warrant authorizing the search of any house which the police officer to whom it was issued might think fit to search. The second ground was that the evidence was legally insufficient to warrant the conclusion that the house searched was used as a common gaming house.

Mr. A. P. Dube, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

TUDBALL, J.:—The applicant in this case has been convicted under sections 3 and 4 of the Public Gambling Act and has been fined Rs. 30. The two points taken before me are:—(1) That the search carried out by the police was entirely illegal, and (2) that it is not proved that the house in question is a gaming house. In regard to the first point after examining the warrant I find it was issued apparently for the search of any house which the police officer to whom the warrant was issued might think proper to search. There can be little doubt that the warrant was entirely illegal and any search under it was not such as was contemplated by the Act. The result of this illegal search, however, is merely this, that no presumption whatsoever can be drawn in accordance with the

* Criminal Revision No. 499 of 1912 from an order of G. O. Allen, Magistrate, first class, of Mirzapur, dated the 18th of January, 1912.

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Act such as is allowed by the terms thereof to be drawn in the case of a legal search. If, however, there is evidence on the record to establish that the house was a gaming house and that the present applicant was using it as such for his own profit, the legality of the conviction cannot be questioned. The evidence on the record is to the effect that the house in question belongs to one Mohan Kalwar. It was empty and unoccupied. This is to be gathered from the evidence of Bindeshri, one of the defence witnesses. The prosecution evidence shows that Zakir and Hargobind, the present applicant, with or without the permission of the owner, were as a matter of fact using a room in this building for the purpose of gaming and that they were taking a portion of the winnings from the winners. The evidence is to the effect that when the police arrived gaming was going on. Sixteen cowries were found on the ground. There was also a carpet on the ground. Candles and a *chirag* were alight. A piece of chalk and a certain amount of cash was also recovered. But it is impossible to follow the train of thought in the Magistrate's mind when he said that the piece of chalk in the present case was an instrument of gaming, for there is nothing on the record to show that it was used for that purpose. It is urged that cowries are not instruments of gaming *per se*, and unless and until there is evidence to show that they were used as instruments of gaming, the court has no right to hold that they were such instruments. The evidence for the prosecution is to the effect that gaming was going on and that sixteen cowries were on the ground. *Solahi* is a game which is played with sixteen cowries and is a very common game in this country for the purpose of gambling, though it would have been better if the Magistrate had made the point perfectly clear by examination of witnesses. Still, the circumstances of the case place it beyond doubt that the game which was being played was a game of *solahi*, for which cowries are used as instruments of gaming. In my opinion, therefore, the evidence on the record is sufficient to enable the Court to hold that the applicant was using the house in question as a gaming house, deriving profit therefrom, and that the cowries were instruments of gaming and were being used as such. In these circumstances I do not deem it necessary to interfere at all in this case. The application is dismissed.

Application dismissed.