

of which a gift deed was executed by Mst. Mansa Devi and in respect of the other the mortgage deed in dispute was executed. Defendants Nos. 1—3, in whose favour the gift deed was executed, have already submitted to the decree, and there remains no dispute about the property gifted to them in this appeal. This appeal relates only to the mortgaged property. The plaintiff's suit will, therefore, fail in respect of only the mortgaged property if she fails to deposit the mortgage money within the time which may be granted to her by the lower court.

It is therefore ordered that the appeal be allowed, the decree of the lower court be set aside and the case be remanded to the lower court to re-admit it under its original number and to dispose of it in accordance with law according to the observations made above. As the appellant has substantially failed, the respondent will get his costs from the appellant.

REVISIONAL CRIMINAL

Before Mr. Justice Allsop
EMPEROR v. QABUL SINGH*

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Public Gambling Act (III of 1867), section 1, as amended by U. P. Public Gambling (Amendment) Act (Local Act 1 of 1925)—“Common gaming house”—Satta gambling—Gaming on digits—Public Gambling Act, section 6—Instruments of gaming—Slips of paper with numbers on them.

It is not all gaming on digits which can constitute a common gaming house. Unless the winning number is to be ascertained in one or other of the manners mentioned in paragraph (1) of the definition contained in section 1 of the Public Gambling Act, 1867, as amended by the U. P. Public Gambling (Amendment) Act, 1925, the place where the gaming was taking place would not be a common gaming house, unless the occupier was obtaining some profit from the use of the place.

But where, in pursuance of a warrant issued under section 5 of the Act upon information that a house was being used for *satta* gambling, the house was searched and slips of paper with numbers noted on them were found upon the persons of several people present, and there was no evidence as

*Criminal Revision No. 1018 of 1939, from an order of S. Nawab Hasan, Sessions Judge of Meerut at Muzaffarnagar, dated the 9th of December, 1939.

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to the manner in which the winning number was to be ascertained, but there was no evidence or explanation that these slips of paper, which were of the kind commonly used for the purpose of *satta* gambling, were being used for any other purpose, it was held that according to section 6 the discovery of these instruments of gaming was evidence proving that the house was a common gaming house and the persons were there present for the purpose of gambling.

Slips of paper with numbers noted on them may come within the term "Instruments of gaming".

It is not necessary in every case to show that the alleged instrument of gaming was in fact being used for the purpose of gaming; because if it was necessary to show that, then the provisions of section 6 would be entirely useless.

Mr. K. D. Malaviya, for the applicant.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

ALLSOP, J.:—I have before me two applications for the revision of orders passed by a learned Magistrate in the district of Muzaffarnagar. One is an application by Qabul Singh who has been sentenced to rigorous imprisonment for a period of one month under section 3 of the Gambling Act and the other is an application by four men who have been sentenced to a fine of Rs.50 each under section 4 of the same Act.

It appears that a sub-inspector of police obtained from a Magistrate a warrant to search the house of Qabul Singh because he had received information that this man was indulging in what is known as *satta* gambling, that is, gambling on certain winning numbers which were to be ascertained in some way. The sub-inspector went to Qabul Singh's house in pursuance of the warrant of search and he found this man on the platform in front of the house writing numbers upon slips of paper. The man was searched in the presence of two witnesses and certain slips with numbers written upon them were found upon his person. Slips were also found upon the persons of two of those who were with him at the time. The four men who have made one of the applications were all present. The police also found some notebook or register or book of some kind in which it

appears that certain figures had been written. On these facts the applicants were prosecuted and have been convicted and sentenced as I have already stated.

It is argued before me that there were no materials upon the record which would justify the convictions of the applicants. Learned counsel has drawn my attention to the definition of the term "Common gaming house" given in the Public Gambling Act as amended by the legislature of these provinces. The definition is as follows:—

"Common gaming house means:

"(1) In the case of gaming on the digits of the sale price of any commodity, for example, opium or cotton, or on the digits of papers or bales manipulated from within jars or other receptacles, or on the occurrence or non-occurrence of any natural event, for example, rainfall or the quantity of rainfall, any house, room, tent, walled enclosure, space, vehicle, vessel, or any place whatsoever in which instruments of gaming are kept or used for such gaming;

"(2) In the case of any other form of gaming, any house, room, tent, walled enclosure, space, vehicle, vessel, or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning and occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place or instrument, or otherwise howsoever."

Learned counsel has suggested that it is impossible for the prosecution to rely upon the first paragraph of this definition unless they can show the manner in which the winning number was to be ascertained. His contention is that the winning number must be the sale price of a commodity or the quantity of rainfall or some number ascertained from some natural event or a number drawn from a jar or some receptacle of that kind. He points out that it is not suggested and there is no evidence that the place with which we are concerned

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would come within the second paragraph of the definition because nobody suggests that Qabul Singh was making any profit from the use of the place as a gaming house. It is quite clear to my mind that it is not all gaming on digits which constitutes a common gaming house. If the winning number is to be ascertained, in some manner other than that mentioned in paragraph 1 of the definition, then the place where the gaming was taking place would not be a common gaming house unless the occupier was obtaining some profit from the use of the place. Learned counsel for the Crown has, however, relied upon the provisions of section 6 of the Act. He has pointed out that the house was searched in pursuance of a warrant issued under section 5 and he says that it has been found as a fact by the Magistrate that these slips with numbers upon them and the register were found at the place where Qabul Singh and the other applicants were assembled in spite of the fact that Qabul Singh and the other applicants denied that these articles had been discovered. He says that these articles are instruments of gaming and that consequently the discovery of them is evidence, until the contrary is made to appear, that the place was being used as a common gaming house. In my judgment this contention is correct. It has been urged on behalf of the applicants that these slips of paper cannot be described as instruments of gaming because there is nothing to show for what purpose they were being used. It seems to me, however, that it is impossible to argue with any force that it is necessary in every case to show that the alleged instrument was in fact being used for the purpose of gaming because, if it was necessary to show that, then the provisions of section 6 of the Act would be entirely useless. The very wording of the first part of that section which speaks of any cards, dice, gaming-tables, cloths, boards or other instruments of gaming shows that it is not necessary to prove that the particular instrument was in fact used for gaming because cards, for instance, may be and are used for many purposes other than gaming and still

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the discovery of cards would justify the courts in using that discovery as evidence, until the contrary was shown, that the place was being used as a common gaming house. In the circumstances of this case these slips of paper with numbers upon them were found and one of the facts with which we are confronted is that none of the applicants ever attempted to explain the purpose for which these slips were being used. Slips of this kind are commonly used for the purpose of betting or wagering and in the circumstances it seems to me that the learned Magistrate was justified in concluding that these slips were being used as a means of or for the purpose of carrying on some form of gaming. They were instruments of gaming and their discovery was evidence which the Magistrate was entitled to consider as proving that the place where they were found was a common gaming house or, in other words, that the other requisites of a common gaming house were established. As I have already said none of the applicants explained at the time or has since explained that these slips were being used for any purpose other than gaming, or if they were used for gaming it was gaming of a kind which would not bring the place within the definition of a common gaming house. In these circumstances I am satisfied that the convictions were justified and there is no reason for interference in exercise of the revisional powers of this Court.

Learned counsel has urged that the sentence of imprisonment should not have been passed upon Qabul Singh as this was his first offence. There is some suggestion in the evidence that Qabul Singh has been carrying on an extensive business in the way of *satta* gambling and it was for the Magistrate to exercise his discretion in passing this sentence. I do not see any reason why I should interfere with this discretion. I, therefore, dismiss both the applications. Qabul Singh will surrender to his bail and serve out his sentence.