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than the interpretation of rule 6 of order XXXIV, of the Code of Civil Procedure. Accordingly we answer the question in the negative.

REVISIONAL CRIMINAL.

Before Mr. Justice A. G. P. Pullan.

1930
May, 19.

LACHHMAN AND OTHERS (ACCUSED-APPLICANTS) v. KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY).*

Gambling Act (III of 1867), sections 3 and 4.—Diwali gambling, when an offence.

It is true that the law will not countenance gambling even at *Diwali* if it is in contravention of the Gambling Act, and if such gambling takes place in a public place or if the owner of the premises is making a profit out of the gambling the conviction will not be illegal. But where in such a case the only evidence of anything being done in contravention of the Gambling Act was that the owner of the house had in front of him a small pot containing a few annas and there was no reason whatever for supposing that this represented his profits or that it was what is known as *nal* it may very well have been the small sum which he had won or which he proposed to stake, it was an ordinary case of *Diwali* gambling in a private house and no offence was committed under the Gambling Act. *Ram Shankar v. King-Emperor* (1), and *King-Emperor v. Shankar Dayal* (2), referred to.

The festival of *Diwali* is recognized by all Hindus as a time when gambling is not only permissible but praiseworthy and the law has never interfered with this practice as such and it is highly undesirable to issue warrants to the police in order that they may interfere with persons engaged in *Diwali* gambling as it encourages the police to run in numbers of perfectly innocent persons in order to get a reward.

Mr. J. N. Prasad Kapoor, for the accused.

The Assistant Government Advocate (Mr. H. K. Ghose), for the Crown.

*Criminal Reference No. 22 of 1930.

(1) (1916) 20 O.C., 4.

(2) (1922) 9 O.L.J., 667.

PULLAN, J. :—These references were made by the learned Sessions Judge of Unao. They arise out of the same case. The *kotwal* of Unao obtained a warrant from the Superintendent of Police in order to raid a house where gambling was going on at the time of *Diwali*. He found a number of people gambling with *cowries*. The total amount of money found on the premises was Rs. 24-12-9; and the number of persons playing was twenty-eight. The Magistrate fined all except two whom he held to be minors and whom he discharged with an admonition. The total amount of fines realized was Rs. 290. In his judgment the Magistrate observed “The festival of *Diwali* does not give a free permit to persons to gamble in contravention of the provisions of the Gambling Act.” The last words are important. The festival of *Diwali* is recognized by all Hindus as a time when gambling is not only permissible but praiseworthy, and the law has never yet interfered with this practice as such. It is, however, true to say that the law will not countenance gambling even at *Diwali* if it is in contravention of the Gambling Act. If therefore this gambling took place in a public place or if the owner of the premises was making a profit out of the gamblers, the conviction might not be illegal although the raid and the prosecution would still in my opinion be deplorable. The only evidence in this case that anything was being done in contravention of the Gambling Act is that the owner of the house had in front of him a small pot containing 15 annas. There is no reason whatever for supposing that this represented his profits or that it was what is known as *nal*. It may very well have been the small sum which he had won or which he proposed to stake. In my opinion this was an ordinary case of *Diwali* gambling in a private house. The sums staked were trifling and in my opinion no offence was committed under the Gambling Act. On previous occasions the Judicial Commissioners of Oudh

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have had occasion to point out that *Diwali* gambling was not to be considered an offence. I refer to *Ram Shankar v. King-Emperor* (1), and *King-Emperor v. Shankar Dayal* (2). In his explanation the learned Magistrate has attempted to differentiate both cases but he has not succeeded. I regret to say that I have recently seen several cases in which warrants have been issued to the police in order that they may interfere with persons engaged in *Diwali* gambling. In my opinion to issue such warrants is highly undesirable as the police are merely encouraged to run in numbers of perfectly innocent persons in order to get a reward. As I have already shown in this case no less than Rs. 290. have been collected from twenty-six persons and the Magistrate has expressed his intention of giving a reward to the police. I can only hope that no reward has been given. I accordingly accept this reference, set aside the convictions and direct that all the fines shall be returned. It is not, in these circumstances, necessary to consider the minor law point raised as to the applicability of section 562(1A) to cases under the Gambling Act.

Reference accepted.

APPELLATE CRIMINAL.

*Before Mr. Justice Muhammad Raza and Mr. Justice
A. G. P. Pullan.*

MANNI (APPELLANT) v. KING-EMPEROR (COMPLAINANT-RESPONDENT).*

1930
July, 10.

*Criminal Procedure Code (Act V of 1898), section 164—
Statement of a witness made behind the back of an
accused, admissibility of—Witnesses—Evidence of a child
witness, weight to be attached to.*

*Held, that the statement of a witness made under section
164 of the Code of Criminal Procedure behind the back of the
accused cannot be properly used as evidence against him.*

*Criminal Appeal No. 244 of 1930, against the order of I. M. Kidwai, Additional Sessions Judge of Bahraich, dated the 8th of May, 1930.

(1) (1916) 20 O.C., 4.

(2) (1922) 9 O.L.J., 667.