

## REVISIONAL CRIMINAL.

*Before Mr. Justice Brasher.*

**KHILINDA RAM AND OTHERS—Petitioners,**

*versus*

**THE CROWN—Respondent.**

1922

May 6.

Criminal Revision No. 181 of 1922.

*Gambling Act, III of 1867, sections, 3, 4, 5—Search—whether section 103, Criminal Procedure Code, Act V of 1898, applies to such a search—Joint trial—keeper of common gaming house and the persons found therein—legality of.*

*Held*, that the joint trial of a keeper of a common gaming house and of the persons found therein for offences under sections 3 and 4 of the Gambling Act, respectively, is legal.

*Bhana Mal v. Crown* (1), followed.

*Held also*, that the provisions of section 103, Criminal Procedure Code, 1898, do not apply to a search conducted after the issue of a warrant under section 5 of the Gambling Act.

*Case reported by H. F. Forbes, Esquire, Sessions Judge, Dera Ghazi Khan, with his No. 104-G. of 26th January 1922.*

HAR GOPAL, for Petitioners.

S. C. CHATTERJI, for the Government Advocate,  
for Respondent.

The accused, on conviction by Sardar Gurmukh Singh Mougia, exercising the powers of Magistrate of 1st Class in the Dera Ghazi Khan District, were sentenced, by order, dated 14th January 1922, accused No. 1, under section 3 of Act III of 1867, to one month's simple imprisonment and the remaining accused under section 4 of Act III of 1867, to a fine of Rs. 25 each.

The facts of this case are as follows:—

The Superintendent of the Dera Ghazi Khan Police having received information that the house of Khilinda Ram, accused No. 1 in the case, which is situated in the town of Dera Ghazi Khan, was used as a common gaming house, issued a warrant under section 5 of Act III of 1867.

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Under the authority of this warrant the city Sub-Inspector, accompanied by some Police Force and one Motan Ram, raided the house mentioned in the warrant on the night between 8th and 9th November 1921, and found Khilinda Ram and 11 others present there. On a search being made in the house playing-cards, some *kauris* and cash aggregating Rs. 100-2-3 were found and all the 12 persons were arrested and sent up for trial, accused No. 1, under section 3 and the rest under section 4 of the Gambling Act.

The proceedings are forwarded for revision on the following grounds:—

It would appear that the joint trial of the keeper of a common gaming house and of other persons for being found in such a house, is illegal.

It seems also that the search was illegal. The provisions of section 103, Criminal Procedure Code, should be followed in all searches as a general provision of law. In the present instance only one respectable person of the vicinity was called to witness the search.

For these reasons I forward this case on the revision side for orders.

Accused No. 1 was released on bail of Rs. 500 by order of this Court, dated 14th January 1922. The fines imposed upon the rest of the accused have all been paid.

BRASHER, J.—The joint trial of Khilinda Ram and the other accused was not illegal (see *Bhana Mal v. Crown* (1)).

I am of opinion that the provisions of section 103, Criminal Procedure Code, do not apply to a search conducted under section 5 of Act III of 1837. Under section 5, Criminal Procedure Code, investigations into offences under any special law are to be made according to the provisions of the Criminal Procedure Code but subject to any enactment for the time being in force. Chapter VII of the Code, which deals with processes to compel the production of documents and

other movable property and for the discovery of persons wrongfully confined, contains three sections (96, 98 and 100) authorising the issue of a search warrant by a Court in certain circumstances, and a search warrant under this chapter can only be granted by a Court. Section 103 provides that searches under this chapter shall be conducted in the presence of two or more respectable inhabitants of the locality, and under section 165, Criminal Procedure Code, this provision applies also to searches conducted by the Police.

Section 5 of Act III of 1867 prescribes a special procedure which may be followed when a District Magistrate, first Class Magistrate or District Superintendent of Police receives credible information and has reason to believe that any house, walled enclosure, room or place is used as a common gaming house. The section is to some extent analogous to section 98, Criminal Procedure Code, but it authorizes the issue of a warrant to enter and search buildings, and to take possession of certain articles when the circumstances would not justify the issue of such a warrant under the Criminal Procedure Code. The warrant moreover may be issued by the District Superintendent of Police as well as by a Magistrate.

A search conducted after the issue of a warrant under section 5 of Act III of 1867 is not therefore a search under Chapter VII of the Criminal Procedure Code, and section 103, Criminal Procedure Code can have no application. In the case of searches under the Opium Act the provisions of the Criminal Procedure Code have been expressly made applicable by section 16, but Act III of 1867 contains no corresponding section.

I decline to interfere. The accused Khilinda Ram must surrender to his bail and serve the remainder of his sentence.

M. B.

*Revision rejected.*

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