

THE INDIAN LAW REPORTS

Rangoon Series.

APPELLATE CRIMINAL.

Before Mr Justice Baguley.

KING-EMPEROR

v.

MAUNG PO SEIN.*

1928

July 11.

Habitual Offenders Restriction Act (Burma Act II of 1919)—Burma Gambling Act (Burma Act I of 1899), s. 17—Person convicted under the Gambling Act not to be dealt with under the Habitual Offenders Restriction Act.

Held, that no restriction order under the provisions of the Habitual Offenders Restriction Act can be passed against a person proceeded against under s. 17 of the Burma Gambling Act for earning his livelihood by unlawful gaming.

K.E. v. Kyaw Hla, 4 Ran. 123; Nga Pa v. K.E., 4 Ran. 455—referred to.

The accused was dealt with under section 17 of the Burma Gambling Act and an order under section 7 of the Burma Habitual Offenders Restriction Act was eventually passed against him restricting his movements. The accused violated his restrictions and was prosecuted under section 18 (1) of the Habitual Offenders Restriction Act before the Township Magistrate of Thègôn. The Magistrate reported the case for orders to the District Magistrate of Prome who was of opinion that the prosecution and the original order were illegal. He submitted the case to the High Court for orders under section 438 of the Criminal Procedure Code.

* Criminal Revision No. 351B of 1928.

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BAGULEY, J.—It has already been held in *Kyaw Hla's* case (1) that the Habitual Offenders Restriction Act does not apply to persons proceeded against under section 3 of the Opium Law Amendment Act, and in *Nga Pa's* case (2) that it does not apply to persons proceeded against under section 64A of the Burma Excise Act. There seems to be, as yet, no recorded case stating whether or not it applies to persons proceeded against under section 17 of the Gambling Act.

In my opinion it does not. The wording of the relevant sections is, *mutatis mutandis*, exactly the same, and probably section 17 of Gambling Act, as the oldest of the three, is the one from which the other two were copied.

There is no need for me to pass any orders in this case. The District Magistrate has powers under the Habitual Offenders Restriction Act to vary or cancel any order passed under it. As regards the case from the Court of the Township Magistrate, Thègôn, which started this matter, it appears to be in suspense, no orders have been passed under it, and probably the simplest way of dealing with it would be for the learned District Magistrate to arrange with the Public Prosecutor to have it withdrawn. Let the records be returned.

(1) (1926) 4 Ran. 123.

(2) (1926) 4 Ran. 455.