

that, therefore, he acted upon credible information within the meaning of section 5 of the Gambling Act (III of 1867). The search was undoubtedly made under section 5 of this Act. The presumption arising out of the discovery of articles, *i.e.* cards, etc., as provided in section 6 of the Act, therefore, arose and the conviction in this case was clearly correct.

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I, therefore, decline to interfere and dismiss the petition.

A. N. C.

Revision dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Harrison.

NATHA SINGH (ACCUSED) Petitioner

versus

MST. HARNAM KAUR (COMPLAINANT)

Respondent.

1926
 March 12

Criminal Revision No. 1966 of 1925.

*Criminal Procedure Code, Act V of 1898, section 488—
 Order dismissing wife's application on husband's promise to provide for her and adding that if he failed to do so he must pay her a certain monthly allowance.*

In a complaint brought by a wife under section 488, Criminal Procedure Code, for maintenance against her husband, the Magistrate made the following order: "The husband is willing to take his wife and support her. The wife agrees to doing so. At present the husband is ordered to take the wife away and maintain her, but if he fails to do so, and turns her out he will be liable to pay Rs. 15 per month for maintenance".

Held, that the order of the Magistrate regarding maintenance being conditional, is *ultra vires* and must be set aside.

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Phula Khan v. Crown (1), *Jowala Devi v. Jamiat Singh* (2) and 2 Weir 630, cited in Sohoni's Code of Criminal Procedure, 11th Edition, page 1022, para. 29, referred to.

Case reported by Pandit Kundan Lal Bashisht, Sessions Judge, Hissar, with his No. 689 of 30th November 1925.

HARISH CHANDRA, for Petitioner.

L. C. MEHRA, for Respondent.

REPORT OF SESSIONS JUDGE.

The facts of this case are as follows :—

Mussammatt Harnam Kaur, wife of Natha Singh accused, brought a complaint under section 488, Criminal Procedure Code, for maintenance. The trying Magistrate disposed of the case with the following order :—

“The husband is willing to take his wife and support her. The wife agrees to doing so. At present the husband is ordered to take the wife away and maintain her but if he fails to do so, and turns her out he will be liable to pay Rs. 15 per month to her for maintenance.”

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

The application for revision from this order is made by the husband on the ground that the order of maintenance being conditional is *ultra vires*. In support of this contention reliance is placed on behalf of the petitioner on *Phula Khan v. Crown* (1) and *Jowala Devi v. Jamiat Singh* (2) and 2 Weir 630 (Sohoni's Code of Criminal Procedure, page 1022, para. 29). The authorities relied upon by the petitioner are in point and I am of opinion that the

(1) 213 P. L. R. 1915.

(2) 14 P. R. (Cr.) 1917.

order of the trying Magistrate is illegal, and should be quashed.

THE ORDER OF THE HIGH COURT.

HARRISON J.—For the reasons given by the learned Sessions Judge, I set aside so much of the order of the Magistrate as embodies the condition regarding maintenance.

A. N. C.

Revision accepted.

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NATHA SINGH

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KAUR.

HARRISON J.

APPELLATE CRIMINAL.

Before Mr. Justice Campbell and Mr. Justice Addison.

SANTOKH SINGH, Appellant

versus

THE CROWN, Respondent.

1926

March 12

Criminal Appeal No. 64 of 1926.

*Criminal Procedure Code, Act V of 1898, section 465—
Unsound mind—accused appearing to be of—Failure of
Sessions Judge to hold fresh inquiry, after previous in-
quiry by the Committing Magistrate—Trial vitiated.*

In the committal proceedings the Magistrate having reason to think the appellant incapable of making his defence by reason of unsoundness of mind took action under section 464 of the Code of Criminal Procedure and after examining the Civil Surgeon recorded an order that the accused was sane.

Held, that it was nevertheless incumbent upon the Sessions Judge, if he had any doubt about the accused's mental state at the time of the trial, to hold another inquiry into the question whether the accused was then capable of making his defence, to take the opinion of the assessors, and to come to a decision on that question before proceeding further with the trial, and the Judge's neglect to follow the mandatory provisions of section 465 of the Code must vitiate the trial.

Pala Singh v. King-Emperor (1), followed.