

## REVISIONAL CRIMINAL.

*Before Mr. Justice Broadway.*

AHMAD HASSAN, Petitioner

*versus*

THE CROWN, Respondent.

Criminal Revision No. 19 of 1926.

*Gambling Act, III of 1867, sections 4, 5—Warrant—issued by Superintendent of Police, saying “that he had reason to believe, etc.”—whether sufficient to show that he acted on “credible information” within the meaning of section 5.*

*Held*, that where a Superintendent of Police issues a warrant and signs it, certifying that he “had reason to believe, etc.”, the only interpretation to be placed on it is that he had reason to believe, and that therefore he acted upon “credible information” within the meaning of section 5 of the Gambling Act.

*Empress v. Mazhar Ali (1), Kada v. The Empress (2), Vir Singh v. Queen-Empress (3), Basanta Mal v. Queen-Empress (4), and Emperor v. Abdus Samad (5), referred to.*

*Sandhi v. Crown (6), dissented from.*

*Case reported by Pandit Kundan Lal Bashisht, Sessions Judge, Hissar, with his No. 734-J. of 18th December 1925.*

NANWA MAL, for Petitioner.

GOVERNMENT ADVOCATE, for Respondent.

### REPORT OF THE SESSIONS JUDGE.

The petitioner Ahmad Hassan along with two other persons, Jimun and Islam-ud-Din, was challaned under sections 3 and 4 of the Gambling Act ; Jimu was sentenced to pay a fine of Rs. 20 under section 3,

(1) 29 P. R. (Cr.) 1881.

(4) 17 P. R. (Cr.) 1897.

(2) 7 P. R. (Cr.) 1882.

(5) (1905) I. L. R. 28 All. 210.

(3) 22 P. R. (Cr.) 1895.

(6) 9 P. R. (Cr.) 1876.

1926

while Islam-ud-Din and the petitioner Ahmad Hassan were sentenced to pay a fine of Rs. 10 each, under section 4 of the Act. The petitioner only appealed but it was dismissed. He has now filed a revision.

AHMAD HASSAN  
v.  
THE CROWN.

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

It is contended that his conviction is wrong, firstly, because the warrant was illegal as it was issued on the information of the Police and secondly, because the boundaries of the house were not given in the warrant.

On the authority of *Sandhi v. Crown* (1) the first contention is sound. It was held by a majority of the Hon'ble Judges that a mere report of information by a Police officer is not credible information justifying the issue of a search warrant. In the present case the warrant was issued on the information supplied by the Sub-Inspector as deposed to by him, therefore the warrant was illegal.

As regards the second contention, it will be seen that the boundaries of the house were not given in the warrant but it was accompanied by a plan of the house and the name of the occupier was given therein, therefore, *Jamna Prasad v. Emperor* (2) is not applicable in this case.

The case is submitted to the High Court with the recommendation that the conviction and sentence may be quashed because the warrant was illegal.

The fine has been paid.

#### THE ORDER OF THE HIGH COURT.

BROADWAY J.—One Ahmad Hassan was convicted of an offence under section 4 of the Gambling

BROADWAY J.

(1) 9 P. R. (Cr.) 1876.

(2) (1923) 73 I. C. 518.

1926  
 AHMAD HASSAN  
 v.  
 THE CROWN.  
 BROADWAY J.

Act (III of 1867) and sentenced to pay a fine of Rs. 10. His appeal having been dismissed, he moved the learned Sessions Judge who has reported the case under section 438 of the Criminal Procedure Code recommending that the proceedings be quashed and the conviction and sentence set aside on the ground that the warrant issued by the Superintendent of Police on which the search was made was bad in law. The learned Sessions Judge has relied on *Sandhi and Kanhiya v. The Crown* (1) and, in his referring order, has said that in the present case, "the warrant was issued on the information supplied by the Sub-Inspector as deposed to by him, therefore the warrant was illegal." *Sandhi and Kanhiya v. The Crown* (1) has been considered in later authorities and has not been followed or approved of. Had this fact been known to the learned Sessions Judge I have no doubt that he would not have made this reference. I would draw his attention to—

- (1) *The Empress v. Mazhar Ali and others* (2),
  - (2) *Kada and others v. The Empress* (3),
  - (3) *Vir Singh and others v. Queen Empress* (4),
  - (4) *Basanta Mal and Raini v. Queen-Empress* (5),
- as well as
- (5) *Emperor v. Abdus Samad* (6).

In this case the Superintendent of Police issued the warrant and when he signed it certifying that he "had reason to believe," etc., the only interpretation to be placed on the warrant is, to my mind, that the Superintendent of Police had reason to believe and

(1) 9 P. R. (Cr.) 1876.

(4) 22 P. R. (Cr.) 1895.

(2) 29 P. R. (Cr.) 1881.

(5) 17 P. R. (Cr.) 1897.

(3) 7 P. R. (Cr.) 1882.

(6) (1905) I. L. R. 28 All. 210.

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.

1926  
 AHMAD HASSAN  
 v.  
 THE CROWN.

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.