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construction of the trust deed the term "Nursapuri" as used therein means appears to me to be, if not an unmixed question of law, certainly not an unmixed question of fact. [*Palaniappa Chetty and another* v. *Deivasikamony Pandara* (1); and *Narendra Nath Dutta and another* v. *Abdul Hakim and others* (2).]

Upon the whole I am of opinion, for the reasons that I have stated, that the Court ought to certify this case to be a fit one for appeal to His Majesty in Council under section 109 (*c*) of the Code of Civil Procedure, and a certificate granting leave to appeal to His Majesty in Council will issue on each application.

MYA BU, J.—I agree.

CRIMINAL REVISION.

Before Mr. Justice Bagnley, and Mr. Justice Ba U.

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Dec. 18.

HTWAN HTIN *v.* KING-EMPEROR.*

Cognizable offence—Power of arrest restricted to District Superintendent of Police—Further requirements for arrest without warrant—Burma Gambling Act (Burma Act I of 1889), ss. 6 (1) (b), 11, 12—Criminal Procedure Code (Act V of 1898), s. 4 (f)—Process Fee Rules, 1923, Rule 18 (b) (2).

Under the provisions of s. 6 (1) (*b*) of the Burma Gambling Act the only police officer who may arrest without warrant a person for an offence under s. 11 or 12 of the Act is the District Superintendent of Police, and then only if he has received credible information or has other sufficient grounds for believing that the place is used as a common gaming house, and furthermore, has recorded in writing the information or the grounds of his belief. Under such circumstances cases under ss. 11 and 12 of the Burma Gambling Act are not cognizable, and the accused must pay process fees for the issue of summonses to his witnesses.

Bahabal Shah v. *Tarak Nath Choudhry*, I.L.R. 24 Cal. 691; *Emperor* v. *Chandri Bawoo*, I.L.R. 49 Bom. 262—*followed.*

Emperor v. *Abasbhai*, I.L.R. 50 Bom. 344; *Queen-Empress* v. *Deodhar Singh*, I.L.R. 27 Cal. 144—*considered.*

* Criminal Revision No. 702B of 1934 from the order of the Additional Sessions Judge, Bassein, in Criminal Revision No. 474 of 1934.

(1) (1917) 44 I.A. 147. (2) (1927) 55 I.A. 380.

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Shu Maung for the applicant. The District Superintendent of Police has power to arrest a person without a warrant for an offence under ss. 11 and 12 of the Burma Gambling Act, 1889. It is therefore a cognizable offence within s. 4 (*1*)(*f*) of the Code of Criminal Procedure. *Queen-Empress* v. *Deodhar Singh* (1) ; *Emperor* v. *Abasbhai* (2). Under Rule 18 (*b*)(*2*) of the Burma Process Fees Rules no process fee can be demanded from the accused for the issue of subpoenas to his witnesses.

Tun Byu (Assistant Government Advocate) for the Crown. A case is cognizable under s. (*4*) (*1*) (*f*) only when there is an unqualified power of arrest without warrant given to a police officer. If a power of arrest is made conditional upon something being done it is not a cognizable offence.

In *Queen-Empress* v. *Deodhar Singh* (1) the question whether when a power of arrest without warrant is given under certain restrictions or conditions the offence was a cognizable one or not was not raised nor considered. *Emperor* v. *Abasbhai* (2) merely followed *Deodhar Singh*'s case. On the other hand see *Bahabal Shah* v. *Tarak Nath Choudhry* (3) ; *Emperor* v. *Chandri Bawoo* (4).

In any case where a power of arrest is given subject to certain restrictions the case cannot become cognizable unless the conditions precedent are fulfilled. Moreover s. 6 of the Burma Gambling Act is not quite the same as s. 5 of the Bengal Public Gambling Act, 1867. Under s. 5 of the Bengal Act it can be argued that there was no real restriction imposed on the power of arrest.

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(1) I.L.R. 27 Cal. 144.
(2) I.L.R. 50 Bom. 344.
(3) I.L.R. 24 Cal. 691.
(4) I.L.R. 49 Bom. 212.

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BAGULEY, J.—The applicant in this case is being tried under section 12 (*a*) of the Burma Gambling Act, together with other persons who are being tried under section 11 of the same Act. He applied to the Court to have certain defence witnesses summoned. The Court called upon him to pay process fees for the summonses. He contended that no process fees could be demanded, but the Court overruled his claim, and, on application made to the Sessions Judge, Bassein, the magistrate's order was upheld.

It is contended that no process fee can be demanded for the issue of summonses to defence witnesses, because the case which is being tried is a cognizable case, and processes issued in it are, therefore, exempt from paying fees under the Process Fee Rules, 1923 [Rule 18 (*b*) (*2*)]. It is contended on behalf of the Crown that it is not a cognizable case.

A " cognizable case " is defined in section 4 (*f*) of the Criminal Procedure Code :

> " ' Cognizable offence ' means an offence for, and ' cognizable case ' means a case in, which a police-officer, within or without the presidency towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant : "

As the maximum sentence under sections 11 and 12 of the Burma Gambling Act is less than one year, under the second schedule to the Criminal Procedure Code, the case under review is not a cognizable one, unless it is cognizable under the terms of the Act itself.

Arrests of persons who are supposed to have committed offences under section 11 or 12 are made under section 6 (*1*) (*b*) of the Burma Gambling Act,

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This section provides that certain magistrates or the District Superintendent of Police who

" on credible information or on other sufficient grounds, has reason to believe that any house, enclosure, room, place, vessel or vehicle is used as a common gaming-house, may, after recording in writing such information or grounds, either himself do any of the following acts, or by warrant authorize any officer of police not below the rank of Sub-Inspector or officer in charge of a police-station to enter *** any such house, enclosure (etc.), and take into custody all persons whom he finds therein, whether they are then actually gaming or not."

It would be seen from this that no ordinary police officer can arrest a person supposed to have committed one of these offences without a warrant, except the District Superintendent of Police himself personally, and then only if he has received credible information or has other sufficient grounds upon which to believe that the place is used as a common gaming house, and, furthermore, has recorded in writing the information or the grounds of his belief.

It must be confessed that to the ordinary layman to say that a cognizable offence is one for which a police officer may arrest without a warrant, the idea conveyed would be that for such an offence the ordinary constable such as one sees on patrol duty could effect the arrest, and, ordinarily speaking, I should be inclined to hold that the meaning of a statute applying to the man in the street would be the meaning which the man in the street would place upon the statute, particularly when it affects him personally. There is, however, authority for the contrary view.

In *Queen-Empress* v. *Deodhar Singh* (1), where a case under the Gambling Act (Bengal Act II of 1867)

(1) (1899) I.L.R. 27 Cal. 144.

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was concerned, it was held that an offence under that Act

"being an offence for which the District Superintendent of Police may arrest or by warrant direct an arrest, is a cognizable offence within the meaning of section 4 (*f*), of the Criminal Procedure Code."

The relevant passage is to be found at page 150:

"The District Superintendent of Police, being a Police Officer who may, under a law for the time being in force, *viz.*, the Gambling Act, arrest without warrant, we think that the requirements of clause (*1*) (*f*) of the above sections are satisfied, and that the offence in question is, therefore, a 'cognizable offence'. We cannot accept the contention that the words in that clause 'a Police Officer' mean 'any and every' Police Officer. It is sufficient if the Legislature has limited the power of arrest to any particular class of Police Officers."

The same point arose in *Emperor* v. *Abasbhai* (1). This was a case under the Bombay Prevention of Gambling Act, under which Act, similarly, the only police officers who can effect an arrest without a warrant are the Commissioner of Police of the City of Bombay, any District Superintendent of Police or any Assistant District Superintendent empowered by Government in this behalf. It was held that when a man was arrested under this Act the case was a cognizable one, and the decision of the Calcutta High Court in *Queen-Empress* v. *Deodhar Singh* was quoted with approval.

With these two pronouncements in favour of this interpretation of section 4 (*f*) of the Criminal Procedure Code, it may seem difficult to hold directly to the contrary, inclined as I am to do so; but I think it is unnecessary to rule directly

(1) (1925) I.L.R. 50 Bom. 344.

in this behalf, because even if the decisions of the Calcutta and Bombay Courts are correct, I still think that the particular wording of the Burma Gambling Act makes offences under sections 11 and 12 not cognizable.

The Bengal case (1) was decided under the Bengal Public Gaming Act. The authority of the District Superintendent of Police to arrest under that Act arose from section 5 :

" If the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information, and after such inquiry as he may think necessary, has reason to believe that any house, tent, room, space or walled enclosure is used as a common gaming house, he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor shall appoint in this behalf, to enter, etc."

It will be seen that in this case the power of the District Superintendent of Police is quite unfettered, except, of course, that he has got to have credible information that the offence is being committed. It may be presumed that no police officer would take steps of this nature without credible information, and I cannot hold that the necessity of the District Superintendent of Police receiving credible information before he acts can be regarded as any condition precedent to his issuing the warrant or effecting the arrest.

The Calcutta case referred to dates from the year 1900, and three years earlier, in *Bahabal Shah* v. *Tarak Nath Choudhry* (2), a case under the Opium Act, it had been held that when the police officer could only arrest without a warrant if certain conditions had to be fulfilled first of all,

(1) (1899) I.L.R. 27 Cal. 144. (2) (1897) I.L.R. 24 Cal. 691.

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then the case could not be regarded as a cognizable one. At page 696 is to be found the passage :

"In my opinion such a qualified power of arrest *** is not such a power to arrest without warrant as is pointed out in the definition of 'cognizable offence' in the definition clause of the Code of Criminal Procedure."

Again, in *Emperor* v. *Chandri Bawoo* (1), it was also held that when the police have merely a qualified power of arrest, the case arising out of the arrest cannot be regarded as a cognizable case. This case arose out of the Bombay Prevention of Prostitution Act, 1923. Under section 10 of that Act it is laid down that

"any police-officer on complaint, and any police officer authorized in this behalf by the Commissioner of Police by special order without such complaint, may arrest without a warrant any person committing, in his view, any offence punishable under section 3, if the name and address of such person be unknown to such police-officer and cannot be ascertained by him then and there."

At page 219, referring to section 10, there is the passage :

"But here a very restricted power of arrest is given and certain conditions are laid down as to the circumstances under which that power can be exercised.

At page 221 occurs the passage :

"I have already mentioned that there are very serious limitations on the power of arrest under this section 10 and I am clearly of opinion that any case where those conditions are not complied with, cannot be described as a cognizable case."

It is interesting to note that in *Emperor* v. *Abasbhai* (2), already referred to, there was a similar condition limiting the power of the Commissioner

(1) (1924) I.L.R. 49 Bom. 212. (2) (1925) I.L.R. 50 Bom. 344.

of Police to issue a warrant, as under the Bombay Prevention of Gambling Act the Commissioner of Police could only act upon a complaint made before him on oath, and that complaint on oath was a necessary condition precedent to his issuing a warrant or making a raid himself; but this point was not taken up in argument and appears to have been entirely overlooked in the judgment.

As I have said already, I personally would be very reluctant to accept the view of the Bombay and Calcutta High Courts that if one police officer in the district has power to arrest without a warrant that makes a case arising out of such an arrest a cognizable case. If this view of the law be correct, interesting speculation arises as to what would be the state of affairs in certain districts such as Kyaukse or Sandoway, where there is no District Superintendent of Police, the police being under the charge of an Assistant Superintendent, so in those localities there is no police officer who can arrest without a warrant, and, therefore, such a case is certainly not cognizable.

Be that as it may, in view of the wording of the Burma Gambling Act, which lays down certain conditions precedent before even the District Superintendent of Police can make a raid and arrest without a warrant, and following the Calcutta and the Bombay High Courts in *Bahabal Shah* v. *Tarak Nath Choudhury* (1) and *Emperor* v. *Chandri Bawoo* (2), I would hold that cases under sections 11 and 12 of the Burma Gambling Act are not cognizable, and in consequence the order of the magistrate asking for the payment of process fees to summon these witnesses is correct.

(1) (1897) I.L.R. 24 Cal. 691. (2) (1924) I L.R. 49 Bom. 212.

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There is no reason to interfere in revision. Let the record be returned with these remarks.

BA U, J.—The question for decision is whether an offence under section 12 read with section 6 of the Burma Gambling Act is a cognizable offence.

A "cognizable offence" according to section 4 (*f*) of the Code of Criminal Procedure means an offence for, and a "cognizable case" means a case in which a police officer, within or without the presidency towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant.

Now, under section 6 of the Burma Gambling Act it is not any and every police officer who can effect an arrest without a warrant. It is only the District Superintendent of Police and a certain class of magistrates mentioned therein who can do so. Even in the case of those officers, they have to comply with certain conditions mentioned in that section before they can enter a house, enclosure, etc., and make a search and effect an arrest. The conditions are that they must record the information which they have received and their grounds of belief in writing that the house, etc., is used as a common gaming house. These conditions do not, however, in my opinion, in any way limit their power of arrest. The failure to comply with these conditions will affect the presumption which will otherwise arise under section 7 of the Burma Gambling Act, which is as follows:

"When any instruments of gaming are found in any house, enclosure, etc., entered under the provisions of section 6 . . . it shall be presumed, until the contrary is proved, that such house, enclosure, etc., is used as a common gaming house, and that the persons found therein were there present for the

purpose of gaming, although no play was actually seen by the Magistrate, or police officer, or by any one aiding in the entry."

The question that arises then is whether an offence for which only a certain class of police officers, such as the District Superintendent of Police, as in this case, can arrest without a warrant is a cognizable offence within the meaning of section 4 (*f*) of the Code of Criminal Procedure. Two cases, *Queen-Empress* v. *Deodhar Singh* (1) and *Emperor* v. *Abasbhai Abdul Hussein* (2), quoted by my learned brother Baguley are in favour of the view that it is. In *Emperor* v. *Ismail Hirji* (3) the same view, as in those two cases, was held. But, as pointed out by my learned brother Baguley, whose judgment I have had the pleasure of reading,

"that to the ordinary layman to say that a cognizable offence is one for which a police officer may arrest without a warrant, the idea conveyed would be that for such an offence the ordinary constable such as one sees on patrol duty could effect the arrest."

This, if I may say so with respect, is the only sensible meaning that can be given to the term "cognizable offence" as defined in section 4 (*f*) of the Code of Criminal Procedure.

In the case of *Curtis* v. *Stovin* (4), Bowen L.J. says

"the rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule, *viz.*, that, if it is possible, the words of a statute must be construed so as to give a sensible meaning to them."

(1) (1899) I.L.R. 27 Cal. 144.
(2) (1925) I.L.R. 50 Bom. 344.
(3) (1929) I.L.R. 54 Bom. 146.
(4) (1889) 22 Q.B.D. 513 at p. 517.

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If regard is had to the fact that a reference in section 4 (*f*), Criminal Procedure Code, is made to the second schedule wherein the term "police" is used in a more general and popular sense, the intention of the Legislature to use the term "a police officer" in section 4 (*f*) in the sense indicated by my learned brother becomes more apparent.

In any event, looking at the scope and object of the Burma Gambling Act, I have no doubt in my mind that the intention of the Legislature was to treat an offence under section 12 as a non-cognizable offence. Under the second schedule to the Code of Criminal Procedure the police cannot arrest without a warrant for offences against other laws if the offences are punishable with imprisonment for less than three years. Now, the maximum punishment prescribed for an offence under section 12, Burma Gambling Act, is only six months.

For all these reasons I would hold that an offence under section 12, Burma Gambling Act, is a non-cognizable offence.