

# ALLAHABAD HIGH COURT

Lachchi Ram

Vs

Emperor

(G Prasad, CJ. Stuart, J.)

15.02.1922

## JUDGMENT

**G Prasad, CJ**

1. The decision of this revision has been referred to this Bench. The facts are as follows. Lachchi Ram, applicant, occupies a shop in Muzaffarnagar city. The Superintendent, of Police, on information received, raided the shop on the 15th of October 1921. He found therein a book of tickets in a red cover and a cash-box. On the facts, we are satisfied that the tickets contained in the book were being used as forms of memoranda on which to record wagers. It is clear that wagering was actually in progress. The event on which the wagering took place was the determination of the last digit or the last two digits in the average price at which a chest of opium might be sold in the Government sales during a certain period. This is a form of wagering which is common in certain towns in this Province. The question which we have to consider is whether, upon these facts, the applicant has been rightly convicted under Section 3 of the Gambling Act for keeping a common gaming house, The tickets in question and the cash-box are instruments of gaming as they were used for the purpose of carrying on gaming. So the shop of the applicant was certainly a house in which instruments of gaming were kept and used, but we have to see whether they were kept or used for "the profit or gain" of the applicant "whether by way of charge for the use of such house... or otherwise how so ever," and, unless this is established, the conviction must fail, The Magistrate has stated that the applicant charged commission from those persons who made successful wagers, but there is no evidence to support that assertion. It appears clear to us that the applicant was what is known as a book-maker and that he laid wagers with persons using the establishment. If he won he took their money, if he lost he paid them at the odds agreed on. But can it be said that the tickets and the cash-box were kept or used for his profit or gain? They were used in furtherance of his business--otherwise they would not be instruments of gaming--but in themselves they could not be said to be used for his profit or gain. In order to sustain the conviction, the words "for the profit or gain of" would have to be read as meaning, for the purpose of carrying on the gaming. But they cannot be read in that way as such an interpretation would make the words a meaningless redundancy. Instruments of gaming

include articles used as a means or appurtenance of, or for the purpose of currying on or facilitating gaming. We cannot interpret the words "common gaming house" to mean a house in which articles used as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming, are kept or used for the the purpose of carrying on or facilitating gaming. This is simple repetition. And, further, the meaning of the words "for the profit or gain of the person... owning such house" is indicated by the succeeding words "by way of charge for the use of such house... or otherwise howsoever." The definition of a common gaming house, in our opinion, is not materially different under the new Act from what it was under the old Act, with the exception that it is no longer necessary as an ingredient of the offence to establish playing by cards, dice, gaming tables or other articles of that nature. But the essential element remains. It must be established that the owner or occupier takes a fixed commission which is irrespective of the result of the gaming, or, at the outside, that he manipulates the conditions in such a manner that he cannot possibly lose, Here there is no evidence of commission having been taken and there is no evidence as to how the wagers were made. There was no charge for the use of the house. If it had been established, as was suggested by the learned Magistrate, that the applicant had deducted commission from the winners to an extent which would invariably give him a profit, or if it had been established that he charged for the use of his premises, he could have been legally convicted under the new Act for keeping a common gaming house, even although the instruments of gaming were only the cash-box in which the money was kept and the forms upon which the Wagers were recorded. But, as the case stands, no offense has been committed. We, therefore, allow the application and set aside the conviction. The applicant is already on bail. His bail-bond will be cancelled.

