DELHI HIGH COURT

Delhi Administration

Vs.

Parkash Chand (Delhi)

Criminal Revn. No.4 of 1967.
(H. R. Khanna, J.)

31.1.1967

ORDER

H. R. Khanna, J.

1. This case has been reported by the learned Additional Sessions Judge, Delhi with the recommendation that the order of the trial Magistrate dismissing the complaint be quashed and the main question which arises for determination is whether an offence under Sections 3 and 4 of the Delhi Public Gambling Act 1955 (Act No. 9 of 1955) (hereinafter referred to as the Act) is a cognizable offence.

2. The brief facts of the case are that a police report entitled State through Section 1 Har Kesh of Special Staff, Old Police Lines, Delhi, against Parkash Chand and nine others, was forwarded to the trial Court by the Prosecuting Inspectors on 27th January 1966. According to the allegations made in the report S. I. Har Kesh. on receipt of trustworthy information that the house of Parkash Chand respondent was being used as a common gaming-house, obtained a warrant from the Superintendent of Police under section 5 of the Act entitling him to search the same and arrest the persons found there. In pursuance of that warrant the sub-inspector raided the house of Parkash Chand on 20th December 1965 and found some cash and articles used for the purpose of gambling. The sub-inspector took those articles into possession and arrested the persons present there.

The endorsement on the report shows that on 21st December 1965 when the accused were produced before Magistrate they were ordered to be released on bail. The report ultimately was forwarded, as stated above, to the trial Magistrate by the Prosecuting Inspector on 27th January 1966. When the case came up for hearing, an objection was raised on behalf of the accused-respondents that as it was a non-cognizable summons

case and S.J. Har Kesh complainant was not present, the respondents were entitled to acquittal. Another objection was taken on the ground that there was no proper complaint. The trial Court condoned the absence of S. I. Har Kesh. It was, however, held that there was no proper complaint as it had not been addressed to any Court.

3. The State then went up in revision to the court of Session. The learned Additional Sessions Judge held that the offence complained of was a cognizable offence and in any case the report made by S. I. Har Kesh was a police report. It was also observed that even if the report was treated as a complaint, there was no defect in it. Recommendation was, accordingly, made that the order of the trial Magistrate dismissing the complaint be quashed and she be directed to try the case according to law.

4. I have heard Mr. Anand on behalf of the State and Mr. Mehta on behalf of the respondents and am of the view that the recommendation of the learned Additional Sessions Judge should be accepted. Section 3 of the Act provides the penalty for owning or keeping or having charge of a gaming house, and according to that section the person guilty of such an offence shall be liable to imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to Rs. 1,000/-. Section 4 of the Act provides penalty for being found in gaming-house for the purpose of gaming. The punishment prescribed for the offence is imprisonment for a term which may extend to three months and fine which may extend to Rs. 500.

Section 5 of the Act has a material bearing and reads as under:

> "If the District Magistrate or any other officer invested with the full powers of a Magistrate of the first class, or the Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, room, tent, enclosure, space, vehicle, vessel or place, is used as a common gaming-house, he may either himself enter, or by his warrant authorize any officer of police, not below the rank of a Sub-Inspector, to enter with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, room, tent, enclosure, space, vehicle, vessel or place, and may either himself take into custody or, authorize such officer to take into custody, all persons whom he or such officer finds therein whether or not then actually gambling.
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> and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money and articles of value, reasonably suspected

to have been used or intended to be used for the purpose of gaming which are found therein; and may search or authorize such officer to search all parts of the house, room, tent, enclosure, space, vehicle, vessel or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody.

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search."

Perusal of the above section goes to show that though an Officer below the rank of a Superintendent of Police needs a warrant or authority to take into custody persons found in a place believed to be used as a gaming house, a Superintendent of Police can do so without a warrant. Question consequently arises as to whether a case under the Act would cease to be a cognizable case because the power of arrest without a warrant is vested in a police-officer not below the rank of Superintendent of Police. In this respect I find that Section 4 (1) (f) of the Code of Criminal Procedure defines cognizable offence to mean an offence for, and cognizable case to mean 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."

According to the second schedule of the Code the police can arrest without warrant in offences under law other than the Penal Code if the offence is punishable with imprisonment for three years or upwards. Delhi Public Gambling Act is a "law for the time being in force" and as under that law the Superintendent of Police can arrest without a warrant the offence under that law would, in my opinion, be a cognizable offence. The words "a police Officer" in the definition of cognizable offence do not mean any and every police-officer and it is quite enough if the power to arrest without a warrant is vested in a police-officer of the high rank of a Superintendent of Police. I am fortified in this conclusion by the following observations of a Division Bench of Calcutta High Court (Rampini and Pratt JJ.) in *Queen-Empress v. Deodhar Singh,* [1]

> "Now, under the Gambling Act, it is not every Police Officer who can arrest without a warrant. It is only the District Superintendent of Police who can arrest or by warrant direct the arrest of persons gambling in a house. The District Superintendent 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 above observations were followed by a Division Bench of Bombay High Court (Marten and Madgavkar JJ.) in *Emperor v. Abasbhai Abdul Hussin,* [2], a case under the Bombay Prevention of Gambling Act. In re, Nagarmal Jankiram, AIR 1941 Nagpur 338, is another case wherein the above dictum was followed by Pollock J. and it was held that an offence under section 6 of the Public Gambling Act is a cognizable offence.

5. I may state that in *Public Prosecutor v. A. V. Ramiah. AIR* [3] a Division Bench consisting of K. Subba Rao C. J. (as he then was) and Basi Reddy J., held that an offence under section 12 of the Madras Gaming Act was not a cognizable offence as it gave only a limited power of arrest to a police-officer. The learned Judges in arriving at this conclusion were influenced by the language of section 13 of that Act according to which a police-officer could arrest without warrant any person committing in his view any offence made punishable by the Act. As the power of arrest was found to be limited to the arrest of a person committing an offence in the view of the police-officer and not otherwise it was held that the power was not of an unrestricted nature and the offence was not cognizable.

There is, however, no such limitation imposed on the power of arrest given to a police-officer under section 5 of the Delhi Public Gambling Act because there is no provision in that Act that only the person committing an offence under the Act, in the view of the Superintendent of Police, can be arrested by him. I would, therefore, hold that the facts of Ramiah's case are distinguishable. Another case to which my attention has been invited is that of *Miyabhai Pirbhai v. State,* [4] decided by Raju J. It was held that an offence under sections 4 and 6 of the Bombay Prevention of Gambling Act was not a cognizable offence. Perusal of this authority no doubt shows that the learned Judge took a view different from that taken in the earlier Calcutta and Bombay Division Bench cases, but, in my opinion, there was no sufficient ground for departing from the view taken in those Division Bench cases.

6. As the offence was a cognizable offence the trial Magistrate should have taken cognizance of the offence upon the report in writing made by S. I. Har Kesh under Section 190 (1) (b) of the Code of Criminal Procedure. The report gave the material facts and the trial Court, in my opinion, was in error in treating it as a complaint. The

definition of the word 'complaint" as given in section 4(1) (h) of the Code of Criminal Procedure expressly excludes the report of a police-officer.

7. I would, therefore, accept the recommendation of the learned Additional Sessions Judge, set aside the order of the trial Magistrate dismissing the complaint and direct that the case be disposed of according to law.

Petition allowed.

Cases Referred.

1. (1899) ILR 27 Calcutta 144 :

2. ILR 50 Bombay 344 : (AIR 1926 Bombay 195)

3. 1958 Andhra Pradesh 392,