

BOMBAY HIGH COURT

Emperor

Vs

Dattatraya Shankar Paranjpe

(Lallubhai Shah, Kt., C.J. Coyajee, J.)

22.08.1923

JUDGMENT

Lallubhai Shah, Kt., Ag. C.J.

1. This is a reference made by the Acting Third Presidency Magistrate under Section 432, Criminal Procedure Code. The question of law referred for our decision is formulated in this manner: Whether it must be established (1) that accused No. 2 levied a fixed commission, irrespective of the result of the gaming or (2) that at the outside he manipulated the conditions in such a manner that he cannot possibly lose.

2. The reference arises out of a case under the Bombay Prevention of Gambling Act IV of 1887, as amended by later Acts including the recent Act of 1922. The learned Magistrate has found that no presumption under Section 7 of the Act can be made in this case. The prosecution has to prove the existence of a "common gaming-house" as a fact in this case. A "common gaminghouse" let thus defined in the Act: 'Common gaming-house' means a house, room or place in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room or place, whether by a charge for use of the instruments of gaming or of the house, room or place, or otherwise howsoever.

3. It is essential for the prosecution under this definition to establish that instruments of gaming were kept or used in the house, room or place for the profit or gain of the person owning, occupying, using or keeping the house, room or place. It may be done by establishing that the person did so either by a charge for use of the instruments of gaming or of the house' room or place, or otherwise howsoever. The expression "otherwise howsoever" appears to be very comprehensive, and does not suggest any limitation, such as is contended for on behalf of the accused.

4. The question referred to us is based upon the decision in *Lachchi Ram v. Emperor*¹ That was a decision under the Public Gambling Act III of 1867, applicable to the United Provinces where

that case arose. The definition of "common gaming-house" as given in that Act is for all essential purposes on the same lines as the definition in the Bombay Act which we have to interpret. According to the interpretation put by the learned Judges in that case upon the meaning of the expression "common gaming-house", "it must be established that the owner or occupier takes a fixed commission which is irrespective of the result of gaming, or at the outside, that he manipulates the conditions in such a manner that he cannot possibly lose"; in other words, the probability of making profit or gain from the gambling itself was not accepted as being sufficient to satisfy the requirements of the definition.

5. We have heard an interesting argument on the question as to how far the words justify the somewhat restricted meaning which has been put upon the definition by the learned Judges of the Allahabad High Court; and after a careful consideration of the arguments urged on either side, and with great respect to the learned Judges, I have come to the conclusion that the words of the definition which we have to construe here would not have their full meaning if we were to accept the narrow construction. I do not think that on a proper construction of the definition the prosecution can be restricted for the purpose of proving that a particular house, room or place is a common gaming house, to the two alternatives mentioned in the case of *Lachchi Ram v. Emperor*. It is sufficient if the house is one in which instruments of gaming are kept or used for the profit or gain of the person keeping or using such place, i.e., where the person keeping or using the house knows that profit or gain will in all probability result from the use of the instruments of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and expected result of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient, in my opinion, to bring the case within the scope of the definition. At the same time it is clear that the prosecution must establish that the purpose is profit or gain. This may be done either by showing that the owner was charging for use of the instruments of gaming or for the use of the house, room or place, or in any other manner that may be possible under the circumstances of the case, having regard to the nature of the game carried on in that house.

6. My answer, therefore, to the question is in the negative. With this answer, I would direct the papers to be returned to the learned Magistrate in order that he may dispose of the case according to his view of the evidence, having regard to our view on the question of law referred to us.

7. We make no order as to costs.

Coyajee J.

7. I am entirely of the same opinion.

Cases Referred.

