
(1921) 02 CAL CK 0013
In the Calcutta High Court

Bajranga Lal Kadia and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 03-02-1921

Acts Referred:

Bengal Public Gambling (Amendment) Act, 1913 — Section 2
Calcutta Police Act, 1866 — Section 45, 46

Citation : AIR 1921 Cal 719 : 62 Ind. Cas. 871

Hon'ble Judges : Lancelot Sanderson, C.J.;Richardson, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—No. 906--This was a Rule obtained by Bajrang Lal Kadia calling upon the Chief Presidency Magistrate to show cause why the proceedings referred to in the petition should not be quashed or such other or further order passed as to this Court may seem fit. There were two other Rules Nos. 926 and 954 of 1920, the same point arising in each Rule. The learned Vakil, Mr. Sanyal, has appeared in Rules Nos. 906 and 926, and the learned Vakil Mr. Manmatha Nath Mukerjee has appeared in support of Rule No. 954.

2. The history of the case is as follows: A petition was presented to the Chief Presidency Magistrate by one Sunda Ram, and it was dated the 1st of May 1920, containing certain allegations to which I will refer presently in detail. Upon that petition the complainant was examined, and the learned Magistrate made an order on the 2nd of May, as follows:--Complainant examined. Assistant Commissioner S.D. will please take cognizance. Search warrant for books and papers, etc." Then on the 3rd of May a further order was made which ran as follows: "A.C.S.D. states he has no jurisdiction. To A.C.N.D. to take cognizance, if evidence sufficient, and send up case." On the 4th of May, the Chief Presidency Magistrate issued a warrant u/s 43 of the Calcutta Police Act, IV of 1866. On the 5th of May a challan was presented by the Police, the name of the complainant being, stated as S.I.L.M. Banerjee of Section D, Burrabazar, against 138 persons, and the offence complained of was: "All the accused were charged with gambling for gain with money on the evening of the 4th May 1920 at No. 160 Harrison

Road, Section 45 4 66" (which I understand meant Section 45 of Act IV of 1866). In the petition of Sunda Ram there was an allegation that certain premises were used for the purpose of gambling: and, the material passages which I need read were as follows: "That for sometime past at No. 160 Harrison Road cotton figure gambling has been carried on to the great detriment of the Indian community. That it has become the centre of most serious cases committed in Calcutta. That here servants entrusted with moneys of their masters come and gamble, the money away. That it is gamble pure and simple and is a temptation to the people and an incentive to many. That apart from crimes which owe their origin to this place, it has been the source of tremendous social and domestic troubles throughout the city. That the modus operandi followed being thus:--that there is no contract for delivery nor is delivery given or taken or asked for. That no goods are purchased nor have they got go-down to keep such goods in stock. That all that happens is that a person who wants to stake money will go to a stall-keeper as modi; a number of them infest the place; every one of them has a book in which entries are made of the stake made by gamblers. That in these transactions, no delivery is ever intended or taken." Then the petition is that the books may be seized and the prayer is that "your Honor may be pleased to direct the Police to take cognizance of the case and that the books of the aforesaid persons may be seized by the Police under search warrant and they may be forwarded to the Court at once" and the petitioner further prays that the offenders might be brought to book."

3. The Rule was obtained on the 14th of September 1920, and, as I understand, at that time most of the accused had appeared before the learned Presidency Magistrate, although some of them had not appeared, and the pleas of those who had appeared were taken, and that was all that had happened before the learned Presidency Magistrate at the time the Rule was obtained.

4. Two main grounds have been relied upon in support of this Rule. I will deal with the one that relates to the procedure, first. The learned Vakil Mr. Sanyal argued that the learned Magistrate had not exercised a judicial discretion when he issued the warrant: and, he based his argument upon the order of the 3rd of May, when the Magistrate directed the Police to take cognizance, if evidence sufficient:" and, the learned Vakil, as I understand his argument wished us to come to the conclusion that the learned Magistrate had not sufficient evidence before him in his own opinion to justify the issue of a warrant. He further argued that the Magistrate had by that order directed an enquiry by the Police and that no enquiry was made by the Police and no report was made by the Police, and that in view of that the learned Magistrate had no jurisdiction to take cognizance of the case. He further argued that the challan of the Police did not set out the facts upon which the allegation that the accused had committed an offence was based, and that the learned Magistrate had obviously taken cognizance of the case upon the challan and had not taken cognizance of the case upon the complaint of Sunda Ram.

5. In my judgment the learned Magistrate took cognizance of this case, acting upon the complaint of Sunda Ram: That he issued the warrant u/s 43 of the Calcutta Police Act of 1866 relying upon the information which had been given to him by Sunda Ram on oath must also be accepted as a fact. That being so, in my judgment these two intermediate orders, one of the 2nd of May and the other of the 3rd of May, may be disregarded. It is interesting to note that the learned Vakil Mr. Mukerjee, when he argued, took that view of the case. In my judgment that is the right view to take of this case. The point that Mr. Sanyal took with regard to the challan, technically may have something in it. I do not think that the description of the offence in the challan is all that could be desired, and if the challan stood alone and the Presidency Magistrate had taken cognizance of this case upon that challan alone, there might have been a good deal to be said in support of the view that the proceedings were irregular. But the learned Magistrate, as I have already said, was obviously acting upon the complaint of Sunda Ram. He could not have disregarded the complaint which had been made to him and the evidence which had been given before him by Sunda Ram; and, he must have known that he had issued the warrant in consequence of that complaint, and, he further knew that the persons before him had been arrested in consequence of that warrant. Therefore, there is really no substance in that point. Further, the accused, in this case at all events, were in no way prejudiced by reason of the facts, upon which the offence has been laid, not being fully set out in the challan, because they must have been aware that the charge was based upon the allegations which were contained in the complaint of Sunda Ram. For these reasons, in my judgment the argument which was based by Mr. Sanyal as to the procedure of the case falls to the ground.

6. Now, I will deal with the real question which is one of importance in this case. Inasmuch as the Rule was obtained at a stage when the facts had not been enquired into by the Magistrate except that he had heard the evidence of Sunda Ram, of which we have no record, we must decide this case upon the statements which were made in the petition of Sunda Ram. The question that I have to decide is, am I prepared to say that the statements, contained in that petition, do not disclose an offence within the meaning of Section 45 of the Calcutta Police Act of 1866, Part X begins with Section 41, and that section provides; "Whoever, being the owner, occupier, or having the use, of any house, room, or place, opens, keeps, or uses the same as a common gaming house; and whoever, being the owner or occupier of any house or room, knowingly and wilfully permits the same to be opened, kept, or used by any other person as a common gaming house; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, room, or place so opened, kept, or used; and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, room or place, shall be liable, on summary conviction before a Magistrate, to a fine.... " Then the section which is material to this case comes next, namely, Section 45, which provides: "Whoever is found in any such house," (that is to say, a common gaming house) "room, or place,

playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money wager, stake or otherwise, shall be liable, on summary conviction before a Magistrate, to a fine...and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming." The word "gaming" was defined by Section 2 of Bengal Act IV of 1913 as follows: "gaming" includes wagering or betting [except wagering or betting upon a horse-race, when such wagering or betting takes place (a) on the day on which such race is to be run, and (b) in an enclosure which the stewards, etc....]" but does not include a "lottery." Therefore Section 45 must be read having regard to that definition which has been given in Bengal Act IV of 1913. It was pointed out by Mr. Sanyal that that definition was made in consequence of a decision of this Court by Mr. Justice Holmwood and Mr. Justice Imam, in a case *Ram Partap Nimami v. Emperor* 16 Ind. Cas. 171 : 39 C. 968 : 16 C.W.N. 858 : 16 C.L.J. 250 : 3 Cri. L.J. 603 wherein they held that cotton figure gambling as therein described did not come within Section 45 of Act IV of 1866. Having regard to the allegations in this petition, I am of opinion that it is not possible for me to say that it does not disclose an offence within the meaning of Section 45, having regard to the definition of "gaming" in Act IV of 1913. It begins with the statement that "at No. 160 Harrison Road cotton figure gambling has been carried on," it goes on with the statement that "all that happens is that a person who wants to stake money will go to a stall keeper as modi; a number of them infest the place; every one of them has a book in which entries are made of the stake made by gamblers." Reading a petition as a whole, as I have said before, it is not possible for me, as Mr. Sanyal has urged, to say that that does not disclose an offence u/s 45. When the facts are investigated, it may be that the transactions which may be proved to have taken place at 160 Harrison Road were such as would not bring the case within Section 45. On the other hand, it may be, when the facts are investigated, that such transactions were such as would bring the case within that section. Mr. Sanyal has asked us to say that the transactions which took place at No. 160 Harrison Road were merely wagering contracts, and that if they were merely wagering contracts, they did not constitute an offence, on the part of the persons who took part in them and who were using the premises within the meaning of Section 45. It is impossible for me to express any opinion upon that question at the present stage of the proceedings, as I do not know sufficient about the facts of the case: and I desire to make it clear that I do not express any opinion in respect of that contention. It seems to me that the applicants who obtained these Rules have applied too soon, and that they have asked us to come to a conclusion at a time when the real facts of the case have not been ascertained. At the present time we have nothing but the statements which are contained in Sunda Ram's petition: and as I have already said, on those statements it is not possible for us to say that no offence within Section 45 of Act IV of 1866 has been committed.

7. For these reasons in my judgment this Rule should be discharged.

8. This order will govern the other two Rules which are accordingly discharged.

Richardson, J.

9. I agree. I only desire to add that, as I understand, we are not deciding, as to the offences created by Sections 45 and 46 of the Calcutta Polios Act, that the word gaming house does not include a house used--used, that is, within the meaning of the Act--for the purpose of making the sort of contracts which are described as gaming or wagering contracts. What we do decide is that there were materials before the Magistrate which justified him in taking action u/s 46 of the Act and in taking such steps as were necessary for the purpose of an inquiry in the usual way into the question whether the accused petitioners have or have not committed an offence under the Act. What the result may be must depend on the facts elicited in the course of the investigation which will now be made.