
(1939) 02 BOM CK 0001
In the Bombay High Court
Case No : Criminal Appeal No. 195 of 1938

Emperor	Vs	APPELLANT
Nathalal Vanmali		RESPONDENT

Date of Decision : 28-02-1939

Acts Referred:

Bombay Prevention of Gambling Act, 1887 — Section 4, 5

Citation : AIR 1939 Bom 339 : (1939) 41 BOMLR 548

Hon'ble Judges : N.J. Wadia, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This is an appeal by the Government of Bombay against the acquittal of the accused in appeal by the Sessions Judge of Ahmedabad of offences under Sections 4 and 5 of the Bombay Prevention of Gambling Act, 1887, for which they had been convicted and sentenced by the trial Magistrate.

2. Accused Nos. 1 and 2 are partners in business. Accused No. 3 is their servant, and the other accused are constituents. On April 18, 1936, the police raided the business premises of accused Nos. 1 and 2, which premises are situate opposite the American Cotton Exchange of Ahmedabad. In the raid certain books and documents were seized, and it is suggested that those books and documents are instruments of gaming, and, therefore, since the raid took place u/s 6 of the Act, a presumption arises u/s 7 that the premises raided were used as a common gaming-house. The documents seized, however, are not on the face of them instruments of gaming, and the learned Government Pleader, therefore, relies particularly on the words which were added to Section 7 by an amendment in 1936.

3. Section 7, as amended, provides that in certain events the house, room or place raided u/s 6 shall be presumed to be used as a common gaming house

until the contrary is proved. Now, there are two events, as I read the section on which that presumption arises. The first event is when any instrument of gaming has been seized in the house, room or place entered u/s 6 or about the person of any one found therein. There is no particular difficulty in determining when that event occurs. All that the Court has to do is to see whether the documents and things found in the house raided fall within the definition of "instruments of gaming". If they do, then the presumption arises. The other event is more difficult to determine. It is worded in this way : "And in the case of any other thing so seized"?(that must mean any thing other than an instrument of gaming)?"if the Court is satisfied that the Police officer who entered such house, room or place had reasonable grounds for suspecting that the thing so seized was an instrument of gaming," then the seizure leads to the presumption. So that the occurrence of that event requires two things to be proved, first, that something has been seized, which is other than an instrument of gaming, and, secondly, that the police-officer had reasonable grounds for suspecting that the thing so seized was an instrument of gaming. When these two things are proved, then the Court must presume that the house, which has been entered, was used as a common gaming-house until the contrary is proved. But obviously if the only evidence of the house being used as a common gaming-house lies in the seizure in the house of something which is in fact not an instrument of gaming, although the police-officer had reasonable grounds for suspecting that it was an instrument of gaming, then there is no evidence of such user and the presumption is rebutted. It seems to me that the presumption arising in the second event specified in Section 7 must always be still-born, because it is rebutted by proof of the very event which gives it birth, namely, seizure of something other than an instrument of gaming. The learned Government Pleader says that that construction reduces the amendment of the Act to a nullity, and that what the section really means is that where there is found in a raid an instrument of gaming, or something which is reasonably suspected to be an instrument of gaming, though it cannot be definitely proved to be so, then the presumption arises, and the burden is thrown upon the accused to prove that the suspected thing is not an instrument of gaming. That, no doubt, would be a reasonable construction to be placed upon the section, if the language so permitted. But in construing a section of a penal Act, which casts upon the accused the burden of proving his innocence, the Court must act strictly, and it seems to me that it is impossible, reading the language of the section according to its ordinary and natural meaning, to give to the section the meaning for which the learned Government Pleader contends. I think that what I have called the second event can only arise, on the language used, when it is proved that the thing which was found in the house raided was not an instrument of gaming ; and, as I have pointed out, directly you prove that, you destroy the evidential value of the thing found. So that, in my opinion, in this case in order to bring into play the presumption u/s 7 it must be proved that the things seized in the raid were instruments of gaming.

4. One document, which was seized, and which was very much relied upon, is exhibit 3-A, which consisted of two documents. The first one is a short document, containing certain figures, which in themselves are unintelligible. Two witnesses were called, exhibit 5 and exhibit 6, who purported to explain what that document means. Generally speaking, I think it is not permissible to call a witness to explain to the Court what a document means, unless such a witness is an expert under the Indian Evidence Act. It is for the Court to ascertain what the document means, though no doubt a witness may suggest methods by which an intelligent meaning can be given to the instrument. However, the criticism mainly relied upon against both these witnesses is that they are obviously very unreliable. Their names were not mentioned in the complaint, and they were not called as witnesses until many months after the raid. In examination-in-chief they gave evidence, which no doubt supported the prosecution case, because they said that they had entered into purely gambling transactions in American futures, but in cross-examination they went back upon their evidence entirely. The prosecution theory is that the witnesses had been got at by the accused, who are said to be wealthy persons. On the other hand, the theory of the accused is that the witnesses had been got at in the first instance by the police, and it was only in cross-examination that they repented of their ways and told the truth. At any rate, witnesses of that nature, who are brought forward after a considerable interval of time, cannot be relied upon very far, and I think the learned Sessions Judge was right in saying that their evidence could not be accepted as sufficient to found a conviction.

5. Apart from that evidence, there is really no evidence of pure gambling in American futures. There is a great deal of evidence that the accused were doing business in cotton, both in futures and in options, and it is suggested, and indeed admitted, that they never in fact gave or took delivery of any bales of cotton ; but the rules of the American Cotton Exchange, which the accused say that they operate under, prohibit a transaction where no delivery is given or contemplated, and the cases show that if delivery is given or contemplated, the transaction is not a purely gambling transaction, although one knows very well that in practice in most of these cases dealing in futures and options no delivery is in point of fact ever taken or contemplated.

6. But the accounts of the accused, which are put in, for example, of dealings by accused Nos. 1 and 2 with accused Nos. 4, 6, 7 and 9, seem to be ordinary accounts, which one would expect in dealings of this nature. They show the bales purchased and the bales sold. Sometimes the transaction is a purely future transaction, sometimes it is teji or mandi, or teji mandi ; and where it is a case of option, the commission is shown, if no transaction resulted, that is to say if the option was not exercised. If it was exercised, the price is shown, and on the other side of the account are shown the cross contracts. There were weekly settlements, that is to say settlements before the due date under the contract, and it is suggested that as under those weekly settlements the accounts were closed, the transaction must have been pure gambling which had no relation to

delivery on the due date. But as far as I can see, the accounts are only closed at the end of the week where the bales purchased and sold tally. In that event, of course, there is no question of any delivery, because the constituent has bought and sold the same number of bales, and it is only a question of paying or receiving differences. But where the bales do not tally, the outstanding bales are carried over, and, at any rate, theoretically they would go on being carried over until the due date when the transaction of sale or purchase would have to be put through. There is nothing, in my opinion, to show that the business carried on by these accused in respect of these cotton transactions differs from that normally carried on on the Stock Exchange.

7. I think, therefore, that the appeal of Government fails.

8. Account books, papers and things seized to be returned to the accused.

N.J. Wadia, J.

9. The case of the prosecution was that accused Nos. 1 and 2 were carrying on gambling in American futures and in ank-farak and teji mandi transactions on a large scale. That being their case, it is surprising that they should have been able to adduce so little evidence to support their allegations. In the complaint first made only three witnesses were mentioned, two of them being the police Sub-Inspector and a panch, and the third being one Babulal, a man who had been for a short time a clerk in the office of accused Nos. 1 and 2. The evidence of these three witnesses could not possibly have established the case for the prosecution. The two witnesses on whom they principally relied, Purshottam, exhibit 6, and; Jasubhai, exhibit 5, were both produced at a very late stage.

10. With regard to the alleged dealings in ank-farak, there is no evidence at all. With regard to the gambling in American futures, the only document on which the prosecution relies is. a small slip, exhibit 3-A, containing a few pencil figures. By themselves the figures are unintelligible and do not necessarily show that they relate to any illegal transactions. Accused No. 1 is the chairman of the American Cotton Exchange. He has also a cloth shop. There is nothing impossible in documents being found in his shop which might appear unintelligible to strangers, and the mere fact, therefore, that the figures on exhibit 3-A are not easily intelligible would be no reason for suspecting the accused. If the two witnesses on whom the prosecution rely for showing that exhibit 3-A related to dealings in American futures had been reliable, it could have been said that the prosecution had succeeded in showing that exhibit 3-A referred to dealings in American futures. But these two witnesses are obviously absolutely untrustworthy witnesses. Exhibit 5, Jasubhai, was first examined. After part of his examination-in-chief had been concluded, he disappeared and could only be produced again in Court on a warrant. He made serious allegations that the police had been bringing pressure to bear upon him to depose against the accused, and in the cross-examination he went back on everything which he had deposed against the accused in examination-in-chief, and said that what he had

stated with regard to the dealings carried on by accused Nos. 1 and 2 with the other accused was not based on his own knowledge at all. When this witness failed, the prosecution produced another witness Purshottam, exhibit 6. Purshottam undoubtedly said in his examination-in-chief that he was personally acquainted with the transactions which the accused were carrying on and that those transactions were of a gambling nature. But he again in his cross-examination went back entirely on what he had stated in his examination-in-chief and disclaimed any personal knowledge with regard to the transactions carried on by accused Nos. 1 and 2. It would be impossible to convict the accused on evidence of witnesses such as these ; and if the evidence of these two witnesses is disregarded, there is nothing whatever in the prosecution evidence to show that exhibit 3-A referred to any transactions of a wagering nature, or that accused Nos. 1 and 2 had anything to do with exhibit 3-A, which was found in the pocket of accused No. 3, and which may conceivably have nothing to do with the business which accused Nos. 1 and 2 were carrying on.

11. A large number of account books have been produced to show that teji mandi transactions were carried on on the premises, that in these transactions there was absolutely no intention of either giving or taking delivery, and that the transactions were of a purely wagering nature. Here, again, the account books themselves do not necessarily suggest that the transactions were of a wagering nature. They are capable of the interpretation which, the accused urge, should be put upon them, that they were ordinary transactions carried on under the rules of the American Cotton Exchange, of which accused No. 1 was admittedly the Chairman, and were expressly carried on under the condition imposed by those rules that deliveries were to be given or taken. Accused No. 1 in his statement said that deliveries were intended to be given or taken. It is true that all the other accused in their statements have said that deliveries were not actually given or taken. But the mere fact that deliveries were never given or taken would not show that both parties to the transactions had stipulated that deliveries were never to be given or demanded. Apart from the evidence of the two witnesses whom I have referred to, and who are clearly unreliable, there is nothing to show that deliveries would not have been given even in cases where they were demanded. The only other witness whom the prosecution examined on this point is Babulal, a clerk of accused Nos. 1 and 2, who said that the business carried on by accused No. 1 in the shop which was raided by the police was a cotton brokerage business in connection with the American Cotton Exchange. To that extent he supports the statement made by accused No. 1 that the business, which is referred to in the account books which have been produced in the case, was business done in connection with the American Cotton Exchange and under its rules. With regard to delivery all that the witness said was that he did not know if delivery of cotton was given. But that by itself would not be sufficient to show that both parties to the transactions in every case contemplated that delivery should neither be given or taken.

12. The prosecution evidence fails to establish any case against the accused u/s

4 or 5. I agree, therefore, that the appeal must be dismissed.