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STATE OF GUJARAT

v.

JAGANBHAI BHAGWANBHAI

February 16, 1966.

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[K. SUBBA RAO AND V. RAMASWAMI, JJ.]

*Bombay Prevention of Gambling Act, 1887 (Bom. 4 of 1887), ss. 3 & 7—Necessity of expert to prove articles seized whether “instruments of gaming”—Evidence of officer to whom warrant issued—Corroboration if necessary.*

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The respondent was charged under ss. 4 and 5 of the Bombay Prevention of Gambling Act, on the allegation that he was found accepting bets on American futures, and on being searched currency notes and two slips, on which American Futures were recorded, were found. The trial Magistrate acquitted the respondent, which was confirmed, on appeal, by the High Court. In appeal to this Court the appellant-State contended that it was not necessary to examine an expert to corroborate the evidence of the prosecuting sub-Inspector that the articles seized were “instruments of gaming” and that the evidence of the Police Inspector to whom the warrant was issued under s. 6 of the Act did not require corroboration in each and every case.

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HELD : The contentions are well founded and must be accepted as correct.

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There is nothing in the Act to suggest that in order to prove that the articles seized are “instruments of gaming” it is the duty of the prosecution to examine an expert in every case. It is open to the prosecution to prove that the articles seized are instruments of gaming by proper evidence and it is not necessary to examine an expert for the purpose in each and every case.

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It is also not proper to make a distinction between the evidence of an officer who makes a complaint under the proviso to s. 6 of the Act and to whom a warrant issued for search and the evidence of a person to whom a warrant is issued but who makes no such complaint under the proviso. The question as to whether the evidence of the person who executes the warrant requires corroboration depends on the facts and circumstances of each case and no legal distinction can be made merely because the person who executes the warrant happens to be the person who makes the complaint under the proviso to s. 6 of the Act to the Commissioner of Police or to the Magistrate. [616 A-C]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 167 of 1964.

Appeal from the judgment and order November 4, 1963 of the Gujarat High Court in Criminal Appeal No. 734 of 1962.

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G. S. Patwardhan, R. N. Sachthey and B.R.G.K. Achar, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by

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**Ramaswami, J.** This appeal is brought by the State of Gujarat against the judgment of the High Court of Gujarat at Ahmedabad dated November 4, 1963 in Criminal Appeal No. 734 of 1962.

The respondent was charged in the Court of the Judicial Magistrate First Class, Bulsar under ss. 4 and 5 of the Bombay Prevention of Gambling Act, 1887 (Bombay Act IV of 1887), hereinafter called the 'Act'. The case of the prosecution was that on January 31, 1962 at about 9 p.m. the respondent was found accepting bets on American futures. On being searched in the presence of panchas currency notes of Rs. 119/- and two slips on which American futures were recorded were found. The trying Magistrate, however, held that slips were not "instruments of gaming" within the meaning of s. 7 of the Act. The Magistrate was also not satisfied that the police officer who carried out the search and seized the articles had reasonable grounds to believe that the slips and other articles recovered from the respondent were instruments of gaming. The Magistrate held that the presumption under s. 7 of the Act could not be raised. The respondent was, therefore, acquitted of the charge. Against the order of acquittal the State of Gujarat preferred an appeal to the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 734 of 1962. The appeal was dismissed by Raju, J. on November 4, 1963.

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In support of this appeal Mr. Patwardhan submitted that the High Court was in error in holding that it is necessary to examine an expert to corroborate the evidence of the prosecuting Sub-Inspector that the articles seized were "instruments of gaming". It was also contended by Counsel that the High Court was not right in taking the view that the evidence of the Police Inspector to whom the warrant was issued under s. 6 of the Act required corroboration in each and every case. In our opinion, both the contentions of Mr. Patwardhan are well-founded and must be accepted as correct.

Section 3 of the Act defines the expression "instruments of gaming" as including any article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming, and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming. Section 6 provides for entry and search by police officers in gaming houses. Section 6(1) states:

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"6. (1) It shall be lawful for a Police Officer—

(i) in any area for which a Commissioner of Police has been appointed not below the rank of a Sub-Inspector and either empowered by general order in writing or

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A authorized in each case by special warrant issued by the Commissioner of Police, and

B (ii) elsewhere not below the rank of a Sub-Inspector of Police authorised by special warrant issued in each case by a District Magistrate or Sub-Divisional Magistrate or by a Taluka Magistrate specially empowered by the State Government in this behalf or by a Superintendent of Police or by an Assistant or Deputy Superintendent of Police especially empowered by the State Government in this behalf, and

C (iii) without prejudice to the provision in clause (ii) above, in such other area as the State Government may, by notification in the Official Gazette, specify in this behalf, not below the rank of a Sub-Inspector and empowered by general order in writing issued by the District Magistrate.

D (a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any house, room or place which he has reason to suspect is used as a common gaming-house.

E (b) to search all parts of the house, room, or place which he shall have so entered, when he shall have reason to suspect that any instruments of gaming are concealed therein, and also the persons whom he shall find therein whether such persons are then actually gaming or not,

(c) to take into custody and bring before a Magistrate all such persons,

F (d) to seize all things which are reasonably suspected to have been used or intended to be used for the purpose of gaming, and which are found therein:

Section 7 of the Act relates to presumptive proof of keeping or gaming in common gaming-house. Section 7 provides as follows:

G "7. When any instrument of gaming has been seized in any house, room or place entered under section 6 or about the person of any one found therein, and in the case of any other thing so seized 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, the seizure of such instrument or thing shall be evidence, until the contrary is proved, that such house, room or place is used as a common gaming-house and the persons found therein were then present for the purpose of gaming, although no gaming was actually seen

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by the Magistrate or the Police officer or by any person acting under the authority of either of them:

There is nothing in the Act to suggest that in order to prove that the articles seized are "instruments of gaming" it is the duty of the prosecution to examine an expert in every case. It is open to the prosecution to prove that the articles seized are instruments of gaming by proper evidence and it is not necessary to examine an expert for the purpose in each and every case. It is also not proper to make a distinction between the evidence of an officer who makes a complaint under the proviso to s. 6 of the Act and to whom a warrant is issued for search and the evidence of a person to whom a warrant is issued but who makes no such complaint under the proviso. The question as to whether the evidence of the person who executes the warrant requires corroboration depends on the facts and circumstances of each case and no legal distinction can be made merely because the person who executes the warrant happens to be the person who makes the complaint under the proviso to s. 6 of the Act to the Commissioner of Police or to the Magistrate.

We do not, however, propose to interfere with the order of acquittal in this case, because the offence is petty and the offence was committed several years back. We accordingly dismiss the appeal.

*Appeal dismissed.*