THE RAJASTHAN
PUBLIC GAMBLING ORDINANCE, 1949

(ORDINANCE NO. XLVIII OF 1949)

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(ORDINANCE NO. XLVIII OF 1949)

[Promulgated by his Highness the Rajpramukn on the 14th day of December, 1949]

An Ordinance to provide for the punishment of public gambling and the keeping of common gaming houses in the State of Rajasthan.

Whereas it is expedient to make provision for the punishment of public gambling and the keeping of common gaming houses in [1][the State of Rajasthan.]

NOW THEREFORE, in exercise of the powers conferred by paragraph (3) of Article X of the Covenant, his Highness the RajPramukh is pleased to make and promulgate the following Ordinance :-

1. **Short title and extent.**

(1) This Ordinaness may be called the Rajasthan Public Gambling Ordinance, 1949.

(2) Sections 13 and 17 of this Ordinance extend to the whole of the state of Rajasthan and it shall be competent to the State Goverment whenever, it may think fit, to extend, by notification in the official Gazette all or any of the remaining sections of this ordinance to any city town, suburb, railway, station house or local area within the State of Rajasthan and in such notification to define for the purposes of this ordinance, the limits of such city, town, suburd, station house or local area and from time to time to alter the limits so defined.

From the date of any such extension, so much of any law or rule having the force of law, which shall be in operation in the city, town, suburb, satation house or local area to which such extension shall have been made, as shall be inconsitent with or repugnant to any section so extended, shall cease to have effect therein.

NOTIFICATIONS

The Ordinance has been extended to various places by different notification as under :-

1. See Notfn. No. F.1(200) Police 1/50 dated 20-07-1951. Pub. in R.G. Gaz. Exty. Pt. I. dated 28-07-1951
2. Notfn. dated 17-12-1952, Pub. in R G.Gaz. Exty. Pt.I. dated 20-12-1952 extended to Delwara and Eklogji, District Udaipur,

3. The Ordinance extended to whole of the State of Rajasthan including the Abu, Ajmer and Sunel ateas with effect from 01-09-1957, i.e. the date of enforcement of Raj. Act No. 27 of 1957 ;

4. All the remaining sections of the Ordinance are extended to the areas of Hanumangarh Junction, Hanumangrh Town, Pilibanga, Rawatsar, Padampur, Vijai Nagar and Gajsingh pura vide Notfn.dated 21-09-1976. Pub. in R.G. Gaz, Pt. IV-C, dated 21-09-1976.

5. All the remaining provisions of the Ordinance are extended to the following places vide different notifications as under :-

(1) Vide Notfn. dated 17-12-1952 Pub, in R.G.Gaz, Exty. Pt. I, dated 20-12-1952 P.880]

Town of Delwara and Eklingji District Udaipur.

(2) Vide Notfn. dated 09-09-1958 pub. in R.G. Gaz. Pt. IV-C dated 25-09-1958, p.1007 to the following towns in Ajmer District, namely :-

1. Ajmer
2. Beawar
3. kekri
4. Bijainagar, and
5. Pushkar.

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(3) Vide Notfn. dated 07-02-1961, Pub. in R.G. Gaz. pt. IV-C, at page 20 to the following towns in Alwar District, Namely :-

1. Rajgarh
2. Lachhmangarh
3. Govindgarh
4. Kathumar
5. Kherli
6. Thanaganj
7. Narainpur
8. Tehla
9. Pratapgarh
10. Agra (P.S. Pratapgarh)
11. Behror
12. Ramgarh
13. Tijara

14. Kishangarh
15. Khairthal
16. Tapukra
17. Kotkasim
18. Mundawar

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(4) Vide Notfn. dated 25-06-1962, Pub. in R.G. Gaz, pt. IV-C dated July 12, 1962 at P.I]

to the following towns in Jhunjhunu District, namely :-

1. Pilani (including Vidyabihar)
2. Khetri
3. Surajgarh
4. Udaipur
5. Mandawa
6. Bissau
7. Bagar

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(5) Vide Notfn. dated 06-06-1963, Pub. in R.G.Gaz. pt. IV-C dated 19-09-1963 to the following villages in Ganganagar District. namely :-

1. Mirzawala
2. Mohanpura
3. Banwala
4. Matili Rathan
5. Saduwali
6. Katan
7. Hindumalkote
8. Orki
9. Pakki
10. Keri
11. Fatui
12. Koranwali
13. Sangatpur
14. (9H)
15. Kotha

16. Chunawada
17. Kalgarh
18. Ganeshgarh
19. Mahiyanwali
20. Tatarsar
21. Ladhuwla
22. Natawala
23. Sagarwala
24. Jodhewala
25. Panniwala

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(6) Vide Norfn. dated 21-09-1976, Pub. in R.G. Gaz. pt. IV-C dated 21-09-1976, p. 259]

to the areas meintioned below :-

1. Hanumangarh Junction
2. Hanumangarh Town
3. Pili Bangan
4. Rawatsar
5. Padampur
6. Vijay Nagar
7. Gajsinghpura

2. Definitions. – In this Ordinance, unless there is anything repugnant in the subject or context, -

(1) [x x x]

(2) "Gaming" includes wagering or betting but does not include a lottery;

Explanation. – Any transaction by which a person in any capacity whatever employs another in any capacity whatever or engages for another in any capacity whatever or to wager or bet with another person shall be deemed to be "Gaming",

(3) "Instrument of gaming" includes any articale used as a subject or means or appurtenance of or for the purpose of carrying on or facilitating gaming and any document used as a register or recored or evidence of any gaming ; and

(4) "Common Gaming House" means –

(i) in the case of gaming –

(a) on the market price of cotton, opium or other commodity or on the digits of the number used in stating such price, or

(b) on the amount of veriation in the market price of any such commodity or on the digits of the number used in stating the amount of such variation, or

(c) on the market price of any stock or shares or on the digits of the number used in stating such price, or

(d) on the digits of papers or bales manipulated from within jars or other receptacles, or

(e) on the occurrence or-occurrence of rainfall or other natural event, or

(f) on the quantity of rainfall or on the digits of the number used in staing such quantity or any other sign or symbol denoting the extent of such quantity, or

(g) on the extent of the occurrence of any other natural event, any house, room, tent, enclosure, space, vehicle, vessel or any place whatsoever in which such gaming takes place or in which instruments of gaming are kept or used for such gaming, and

(ii) in the case of any other form of gaming any house, room, tent, enclosure, space, vehicle, vessel or any place what soever in which any instruments of gaming are kopt or used for the profit or gain of the person owning, occupying, using or keeping any such instrument, or such house, room, tent, enclosure, space, vehicle vessel or place whatever by way of charge for the use of the same or otherwise howsoever.

COMMENTARY
SYNOPSIS

1. Instruments of gaming.
2. Common Gaming house
3. Conditions for applicability of sub-clause (ii).
4. Club not a common gaming house-charge made by it considered.

1. Instruments of gaming.

An intialed currency note made over to the punter. He staked it on certain figures and the note was later recovered from the stall of the accused. It was held, that the initialed currency note was an article used as a means of gambling and came within the defintion of an instrument of gambling within the meaning of S. 2(3) of the Gambling Ordinance. [AIR 1932 Bom. 180 and 174] relied on. Chiman Lal V. The State 1957 RLW 544= AIR 1958 Raj. 335.

2. Common gaming house.

Common gaming house, meaning of- Once it is established that the place had been searched under warrant obtained under section 5 of the ordinance the instruments of gaming are found there, it will be presumed that such place is used as a common gaming house and the persons found there were present therefore the purpose of gaming although they may not have actually playing at the time the police officer reached there. *Gulab V. State 1962 355= RLW 355=* ILR 1952 Raj. 740.

3. **Conditions for applicability of sub-clause (ii)** – [1] For the applicability of sub-clause (ii), the following conditions have got to be fulfilled –

(1) Instruments of gaming must be kept or used in the premises in question.

(2) The Keeping or using of the instruments aforesaid must be for the profit or gain of the person owning, occupying, using or keeping such premises.

(3) Such profit or gain may be by way of charge for the use of the premises or the instruments or in any other manner whatsoever.

[2] The expression "or otherwise howsoever" is of the widest amplitude and cannot be restricted in its scope by the words immediately preceding it which lay down that the profit or gain may be way of charge for the use of the premises. In this connection we may usefully quote from the judgment of Shah, Acting C.J., who delivered the judgment of the Division Bench. In Emperor V. Dattatraya Shankar Purajnpe [AIR 1924 Bom. 184]

"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 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 on behalf of the accused."

[3] It cannot be said 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, [AIR 1922 All. 61]. 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 propose of keeping or using the instruments, it would be sufficient, in any 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 maybe done either by showing that the owner was charging for use of the instruments of gaming or for 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.

[4] The Opinion of Shah, Acting C.J. was noted with aproval in Emperor v. Chimanlal Sankalchand [AIR 1945 Bom. 305] (supra), the reasoning adopted in which may be reproduced with advantage.

"Lachchi Ram's" case was considered by a Division Bench of this Court in Emperor v. Dattatraya, [(1923) 25 BLR 1089 = 1924 Bom. 184] and was dissented from. It was hold that to constitute a common it was sufficient if is was one in which instruments of gaming were 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 knew that profit or gain would 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 forfeit 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 to bring the case within the scope of the definition.

"It is argued that even in that case it was observed that the prosecution must establish that the purpose was profit or gain and that might be done either by showing that the owner was charging for the use of the instruments of gaming or for the use of the room or place or in any other manner. The words" or in any other manner, (which were used there instead of the words appearing at the definition or otherwise howsoever) cannot be regarded as restricting the profit or gain of the owner or occupier of the house to profit or gain in a manner ejusdem generis with what precedes those words. And hence even the hope of making a profit out of the gambling itself is sufficient to satisfy the requirement of the definition of common gaming house. It may happen that the occupier of a house may allow it to be used by the public for gambling and he himself may take part in it in the hope of making a profit, although he may not necessarily make it every time. Such a hope is sufficient to make the house a common gaming house and the occupier liable for keeping such a house."

We fully agree with the interpretation of the definition of the term 'common gaming house' occurring in Section 3 of the Bombay Act as propounded in the two Bombay Authorities cited above, as also in the impugned judgment, that interpretation being in conformity with the unambiguous language employed by the legislature. The opinion to the contrary expressed in Lachchi Ram's case (Supra) and in other decisions is found to be incorrect.

4. Club not a common gambling house-charge made by it considered. –

As regards the extra charge for playing cards we may say that clubs usually make an extra charge for anything they supply to their members because it is with the extra payments that management of the club is carried on the other amenities are provided. It is commonly known that accounts have to be kept, stocks have to be purchased and maintained for the use of the members and service is given. Money is thus collected and there is expenditure for running of each section of the establishment.

Just as some fee is charged for the games of billiards, Ping-Pong, tennis, etc. an extra charge for playing cards (unless it is extravagant) would not show that the club was making a profit or gain so as to render the club into a common gambling house. Similarly, a late fee is generally charged from members who use the club premises beyond the scheduled time. This is necessary, because the servants of the club who attend on the members have to be paid extra remuneration by way of overtime and expenditure on light and other amenities has to be incurred beyond the club hours. Such a charge is usual in most of the clubs and we can take judicial notice of the fact.

This leaves over for consideration only the sitting fee as it is called. In this connection, the account books of the club have been produced before us and they show that fee 50 paisa is charged per person playing in the card room. This to our opinion is not such a heavy charge in a Members Club as to be described as an attempt to make a profit or gain for the club. Of course, if it had been proved that 5 points per game were charged, that might have been considered as an illegal charge sufficient to bring the club within the definition. As we have already pointed out, the levy of that charge has not been proved. The other charges which the club made do not establish that this was a common gambling house, within the definition. *State of A. P. V. K. Satyanarayana, AIR 1968 SC 825 {828}.*

3. **Penalty for owing or keeping or having charge of a gaming. –** Whoever being the owner or occupier. or having the use, of any house, room, tent, enclosure, space, vehicle or place, situate within the limits to which this Ordinance applies, opens ; keeps or uses the same as a common gaming house ; and

whoever being the owner or occupier of any such house, room, tent, enclosure, space, vehicle, vessel or place ; as aforesaid ; knowingly or willfully permits the same to be opened occupied, used or kept by any other person as a common gaming house ; and

whoever has the more of management of or in any manner assists in conducting, the business of any house, room, tent, enclosure, space, vehicle, vessel or place as aforesaid and opened, occupied, used or kept for the purpose aforesaid and

whoever advances or furnishes money for the purposes of gaming with persons frequenting such house, room, tent, enclosure, space, vehicle, vessel or place, shall be punished –

(a) for a first offence, with imprisonment which may extended to [1](six months) or with fine which may extend to [2](five hundred rupees) or with both.

(b) for a second offence, with imprisonment which may extend to [3](one year) and, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, shall not be less than [4](one month), either with or without fine which may extend to one thousand rupees ; and

(c) for third or subsequent offence, with imprisonment which may extend to [5](one year) and in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, shall not be less than [6](six months) together with fine which may extend to [7](two thousand rupees).

COMMENTARY

[1] The Rajasthan Public Gambling Ordinance embodies the law on the subject of Gambling and if there was any law in force on that subject in the former State of Ajmer, that must be deemed to have been repealed by section 7 of the Extension of Laws, 1957. There is no room to hold that Part of the was repealed and part remained in force. It does not requires any notification. *State of Rajasthan V. Narayan, 1962 RLW 208.*

[2] *Evidence and proof.*

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1 *Subs. by Act 17 of 1982.*

2 *Subs. by Act 17 of 1982*

3 *Subs. by Act 17 of 1982*

4 *Subs. by Act 17 of 1982*

5 *Subs. by Act 17 of 1982*

6 *Subs. by Act 17 of 1982*

7 *Subs. by Act 17 of 1982*

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 and to whom a warrant is issued for search and the evidence of person to whom a warrant is issued but who makes no such complaint. 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 Act to the Commissioner of police or to the Magistrate. *State of Gujarat V. Jaganbhai AIR 1966 SC 1633.*

[3] Applicability of S. 247, Cr. PC-PSI. absent-Magistrate not competent to record acquittal.

Neither there was any doubt nor there is any doubt about non-applicability of section 24 of the Code of Criminal Procedure in case of gambling where police files a report and cognizance is taken in the police report.

The learned Magistrate adopted a shortcut method of disposal of cases by recording absence of complaint where there was no complainant as such and giving under importance to absence of the Prosecuting Sub-Inspector which was wholly unimportant, so far as acquittal or conviction is concerned.

The Judgment of the learned Magistrate, is set aside and case is sent back to the trial court for proceeding according to law. *The State of Raj. V. Prahlad and orsi, 1981 Cr. LR Raj. 101*.

[4] Accused K and M found present at time of search-Held, accused are guilty u/s. 4-Accused K being Occupier of house is also guilty u/s. 3.

From the evidence of Badrisingh (PW-1), Saligo Ram (PW2) and Narpar Singh (PW3) it is established, that both Kundanmal and Moti were found present in the house of Kundan Mal at the time of search. Both of them are therefore guilty of the offense under section 4 of the Ordinance. In respect of Badri Singh (PW1) and Narpat Singh (PW3) that he was the occupier of the house from which the instruments of gaming were recovered vide seizer Memo (Ex. P.1) Kundanlal is therefore, also guilty of the offence under section 3 of Ordinance.*The State o Rajasthan v. Shri Kundanmal and Anr. 1978 Cr. LR Raj. 692*.

[5] Secs. 3 6- Search warrant illegal – Presumption under section 6 cannot be raised-Conviction on other good and undiscredited evidence-possible.

Where a presumption under sec. 6 of the Rajasthan Public Gambling Ordinance is not available on account of the illegality of the search warrant a conviction can be maintained if the other evidence of actual gaming and realization of commission etc. is in itself good and undiscredited. *Bajrang la v State 1956 BLW 29*.

[6] Ss. 3 & 4-Offences under-whether cognizable-provision of sec. 173, Cr. Pc whether applicable.

Offences under sections 3 and 4 of the Rajasthan Public Gambling Ordinance are not cognizable and the provisions of section 173, Cr. PC do not apply to such cases and there is no obligation in law on the prosecution to furnish copies of its documents to the accused. [AIR 1941 Nag. 388], dissented from, [AIR 1942 Sind. 1932 Bom. 610] relied on . State of Rajasthan v. Tara Chand ILR{1957} 7 Raj. 976=1958 RLW 390=AIR 1958 Raj. 108

[7] Game of Video Games is a game of skill-play of such a game is exempted-No cognizance can be taken-Action taken Quashed.- Referring to the observations made by the supreme Court in various cases, the High Court said that the said video game is a game of mere shill as distinguished from game of chance or game of chance and skill combined. In the said Video games, there are computerised chips which is the soul source of the such video games and on pressing the relevant button, the computerised chip so attached in the respective video game machine is activated and the game starts and the players by his sufficient knowledge and experience and by preactice can control the game on his own and there is no interference outwardly whatsoever. The Video games located in the said Video PArlour is nothing but for enterainment, and therefore saved by sec. 12 of the Ordinance. Since the allegation in the complaint taken at their face value do not disclose any ingredient

of offence the complaint pending against the petitioner quashed. *Tulsiram v. State of Rajasthan, 2002 {3} WLN 55.*

[8] **Sentence.-** Maximum sentence cannot exceed six months. The sentence should be such which may not only be a lesson to an accused so that he may not repeat the offence but should also give lesson to others. Sentence of one month reduced to 8 days. *Devenderpal v State of Rajasthan, 1999 WLC UC 458=1999 Cr LR 378[Raj.]*

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4. Penalty for being found in gaming house. – Whoever to be found in any such house, room, tent, enclosure, space, vehicle, vessel 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 to a fine not exceeding (five hundred rupees) or to imprisonment for any term not exceeding (six months) ;

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 therefore the purpose of gaming.

COMMENTARY

[1] The section 173 of the Code of Criminal Procedure does not apply to the offences under the ordinance as these offences are not cognizable under section 3 and 4 of the ordinance , *State of Rajasthan v Tara Chand, 1958 RLW 390=AIR 1958 Rj. 108=ILR 1957{7} Raj. 976.*

[2] **Found' meaning of** – The person was seen coming out of the premises and also seen trying to escape but was arrested is found within the premises. It does not mean that the person accused should be physically present there when the search was made. *Gulab v State , 1962 RLW 355=ILR 1962 Raj. 740*

[3] **Common gaming house, meaning of** – Once it established that the place had been searched under warrant obtained under section 5 of the ordinance and the instruments of gaming are found there, it will be presumed that such place is used as a common gaming house and the persons found there were present there for the purpose of gaming although they may not have actually plaving at the time the police officer reached there. *Gulab v. State, 1962 RLW 355=ILR 1962 Raj. 740.*

[4] The presumption under section 6 would not be available in the case as there was no allegation that the place was used as a common gaming house, *Mohan Lal v State, 1959 Raj. 1017.*

[5] A case under an analogous provision, namely section 5 of Bombay Prevention of Gambling Act. (4 of 1887)- Applicability-Raising of presumption-Admission of accused.

Section 5 of the Bombay Prevention of Gambling Act holds a person guilty of an offence if he is found in any common gaming-house, gaming cr present for the purpose of gaming. Then it is also stated in section 5 that any person found in any common gaming house during any gaming therein shall be presumed until the contrary is proved, to have been there for the purpose of gaming. In a case where a police officer enters any house room or place under section 6 of the Act, there is a presumption raised under section 7 of the Act. That presumption is in two ways. First is, when any instrument of gaming, has been seized in any house, room or place entered under section 6 of 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 seized of such instrument or thing shall be evidence until contrary is proved that such house, room or place is used as a common gaming house and the second presumption is that the persons found therein were then present for the purpose of gaming although no gaming was actually seen by the Magistrate or the police officer or by any person acting under the authority of either of them. It the facts are proved for enabling the Court to raise the presumption under section 7 of the Act, and then it is for the accused to show that it was not a common gaming house and the he was not present there for the purpose of gaming.

For raising the presumption under sec. 7 of the Bombay Prevention of Gambling Act, the entry in the house room or place must have been in pursuance of a warrant under section 6 of the Act and instrument of gaming must have been seized in the said house room or place so entered or about the person of any one found therein. But if no instrument of gaming has been seized, but any other thing is seized, then the Court must be satisfied that the police officer who enters such house, room or place had reasonable grounds for suspecting that the thing so seized was an instrument of gaming and the seizure of such instrument or thing shall be evidence that such house, room or place is u sed as a common gaming house and the persons found therein were then present for the purpose of gaming, although no gaming was actually seen by the police officer. The presumption under section 7 of the Act, therefore can

only be raised where any instrument of gaming has been seized or police officer entering the house had reasonable grounds for suspecting that the thing so seized was an instrument of gaming. If no instrument of gaming or the other things reasonably suspected as instruments of gaming are seized, then no presumption under sec. 7 can be raised. The particulars which have been put to the accused in this case show that no instruments of gaming or any other thing suspected to be an instrument of gaming have been seized. The question therefore of raising a presumption under section 7 of the Act could not arise in this case. The admission, if any, of the accused that it was at common gaming house would not be sufficient to raise a presumption under section 7 and the further presumption that even though no gaming was actually seen therein, the persons found therein were then present for the purpose of gaming.

Section 5 of the Act raises a different kind of presumption. Even though there might not be any instruments of gaming or any other thing suspected to be instruments of gaming found in a house, room or place, it can still be common gaming house if it is used as such. In that case, if it is proved by other evidence without inviting the presumption under sec. 7 that a particular house, room or place is a common gaming house, then the presumption under section 5 of the Act comes into effect. The presumption raised under section 5 is that a person who found in any common gaming house during any gaming therein shall be presumed to have been there for the purpose of gaming. In order therefore to raise a presumption under section 5 that a person was present in the common gaming house for the purpose of gaming, it must be shown that gaming was going on in that place. Section 5 of the Act makes a person liable to be convicted if he is found in any gaming house gaming or present for the purpose of gaming. If he is not found gaming or present for the purpose of gaming, section 5 of the Act cannot be resorted to and to hold a person present for the purpose of gaming, the presumption can be brought into use provided he is found in a common gaming house during a gaming.

In this case, the admission, if any, is that they were found in a common gaming house, this admission, if any, is that they were found in a common gaming house. This admission by itself does not raise a presumption that they were present there for there for the purpose of gaming. It has further to be shown that at the time when they were found in the common gaming house gaming was going on. That has not been put to the accused. Merely, therefore on the offence under section 5 of the Bombay prevention of Gambling Act cannot be broight home to the accused. A further ingredient, namely, that at that time gaming was going on has still to be established. This not having been done, the learned Magistrate was in error in straightway convicting the applicants-accused under section 5 of the Act. Either it has to be established that the accused were found gaming in a common gaming house or were present in the common gaming house for the purpose of gaming or it has to be established that they

were found in a common gaming house during gaming, in which case it would be open to the accused to show that they were not present there for the purpose of gaming. The learned Sessions Judge, therefore, was right in holding that the particulars of the offence which are explained to the accused were not complete and merely on the statement of the accused that they are guilty in reply to the particulars explained to them, they could not have been convicted under section 5 of the Act. *State of Mah. v. Sharad Keshav, AIR 1967 Bom. 52*.

[6] Game of Video Games is a game of skill-Play of such a game is exempted-No congmzance can be taken-Action taken quashed. *Tulsiram v.State of Rajasthan, 2002 [3] WLR 55*.

[7] Sentence-Fine of Rs. 200/- imposed on the petitioners, Government servants. In the interest of justice and having regard to the fact that the service career of the petitioners Amy not be affected it was directed that the order of sentence shall not come in the way of the petitioners nor it shall tantamount to prejudice the service career of the petitioners. *Vijay Singh v. State of Rajasthan, 2000 WLC UC 53[Raj.].*

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5. Powers to enter and authorise police to enter and search.- If the District Magistrate or a Magistrate of the first class or the District 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, vehicle, space, vessel or place is used as a common gaming house ;

he may either himself enter, or by his warrant authorise any officer of police, not below such rank as the [State Government] shall appoint in this behalf, to enter with such assistance as may be found necessary by night or by day, and by force, if necessary any such house, tent, room, enclosure, vehicle, space, vessel or place ;

and may either himself take into custody, or authorise such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming ;

and may seize or authorise 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 authorise such officer to search all parts of the house, room, tent, enclosure, vehicle, space, vessel or place ; which he or such officer shall have so entered when he or such officer has reason to believe that any instrument of gaming are concealed therein and also the persons of those whom he or such officer so takes into custody ;

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

COMMENTARY

[1] What is illegal warrant of search:- The Sub Inspector obtained the blank warrant signed by the Superintendent of police to be filed up with necessary details as and when the occasion arose, such a warrant cannot be said to be a legal warrant cannot be said to be a legal warrant, and more so it cannot be said that it was issued by the S.P. Police on the creditable information and after making inquiry as he thought necessary made interpolations therein accordingly. *Radheshyam v. state, 1954, RLW 670.*

[2] A person found in the house can be presumed to be gaming only when cards, disc and other instruments of gaming are found in the house at the time of search. No such things excepting a paper and one rupee note was found inside the house. The contents of the paper were not proved. Thus presumption of gaming can not be drawn. *Radheshyam v. State, 1954 RLW 680=1955 NUC [Raj.] 5007.*

[3] Illegality in warrant of search, effect of – If the search warrant is illegal no presumption under section 6 arise that the house is a common gambling house or that the persons present in the house are there for the purpose of the gaming. *Dorab v. Emperor, AIR 1928 All 20.*

[4] If the effect of the search warrant being illegal that no presumption such as arises under section 6 can be made in favour of the prosecution, but a conviction under section 3 based on legal evidence is not vitiated merely because of the defect and irregularities in such warrants. *Miranbakash v. emperor, AIR 1927 Lahore 699.*

[5] If the warrant under which a search is made is bad then the presumption under section 7 of the Act (section 7 of the Act being similar to section 6 of the Raj Public gambling ordinance) cannot be made but mere fact that such presumption cannot be raised does not prevent the prosecution from establishing by evidence in the ordinary way that on the facts proved the accused were guilty of the offence charged. *Emperor v. abbasbhai abdul Hussain, AIR 1926 Bom. 195.*

[6] But where there is sufficient other evidence independent of the presumption, conviction is maintainable. *Bajrang lal v. State, 1956 RLW 92=AIR 1955 NUC [Raj[] 4644.*

[7] But where there is sufficient other evidence independent of the presumption, conviction is maintainable. *Bajrang lal v. State, 1956 RLW 92=AIR 1955 NUC [Raj[] 4644.*

[8] **Search warrant not legal –Effect of-** The search warrant issued in this case under section 5 of the Rajasthan Gambling Ordinance by the District Superintendent of Police authorised a Sub-Inspector of Police to make the search. The notification of the Government

appointing all officers of Police not below, the rank of Sub-Inspector for purposes of section 5 of the Ordinance was published some time after the issue of this search warrant.

It was held, that the search warrant in the circumstances was not according to the provisions of law. IT was however, further held, that the absence, of a warrant or the irregularity or illegality of a warrant under section 5 of the Ordinance would result in the non-availability of the presumption which the court may raise under section 6 of the Ordinance but it would not affect the question, whether the accused was guilty or not and thus the accused cannot be discharged or acquitted on the mere ground that the warrant under section 5 was not in accordance with law.[1884] All WN 286 ILR 26 Mad, 124, AIR 141 Nag. 338. 1959 SC 831 and 196], relied on. *Brijalal v State, ILR [1960] 10 Raj. 36= AIR 1960 Raj. 90.*

[9] **District Superintendent of Police**.- It is only the authorities so athorised who can issue a warrant under section 5 and no other officer of equal or lower rank can do so even though he may be discharging some of the functions of the officer competent of issue the warrant.

The District Superintendent of Police means the Superintendent of Police who has charge of the administration of the police in the district and not any other authority. Unless the State Government has placed the officer in charge of the police administration of the district, he cannot be deemed to be a District Superintendent of police for the purposes of Rajasthan Public Gambling Ordinance. *[ILR 1956 [6] Raj. 636} referred to, AIR 1953 Mys. 14] distinguished, AIR 1925 All. 301 and 1940 Bom.12} relied on. State v Laxminarain, ILR [1964]14 Raj. 1024=1964 RLW 465= AIR 1965 Raj. 5.*

6. Finding cards, etc. in suspected house to be evidence that such house are common gaming house.-When any cards, dice, gaming-tables, cloths, boards or other instruments of gaming are found in any house, room tent, enclosure, vehicle, space, vessel or place ; entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, room, tent, enclosure, vehicle, space vessel or place is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the magistrate or police officer, or any his assistants.

COMMENTARY

SYNOPSIS

1. Analogous provisions.
2. Provisions of Bombay Prevention of Gambling Act, 1887.
3. Section providing special and diferent rule of evidence or procedure-Not ultra vires-Case under Bombay Act, 1887
4. When Presumption arises under section 6-A case under section 7 Bomday Act.
5. Presumption abou persons present in the room raided.
6. Presumption when instruments of gaming recovered.
7. Found meaning of.
8. instruments of gaming-Currency notes and coin ;

1. **Analogous provisions**- S. 6 Public Gambling Act, 1867 and S. 7 of Bombay Prevention of Gambling Act, 1887.

2. Provisions of Bombay Prevention of Gambling Act, 1887.

''6. Entry, search etc. by police officer in groming. – 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 Sub-Inspector and either empowered by general order in writing of authorised in each case by social warrant issued by the Commissioner of Police, and

(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 District, Additional, Assistant or deputy Superintendent of Police, and

(iii) Without prejudice to the provisions 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.

(a) to enter, with the assistance of such person 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,

(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,

(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 :

Provided that no officer shall be authorised by special warrant unless the Commissioner of Police, the Magistrate, the District (or Additional) or Deputy Superintendent of Police concerned is satisfied upon making such inquiry as he may think necessary, that there are good grounds to suspect the said house, room or place to be used as a common gaming house.

(2) Notwithstanding anything contained is any law for the time being in force, no made under this section shall be deemed to be illegal by reason only of the fact the the witnesses (if any) of the search were not inhabitate of the locality in which the house, room or place search is situate."

''7. Presumptive proof of keeping in common gaming house.- when any instrument of gaming has been seized in any house, room or place entered under section 6 or about person of any one found there, and in the case of any other thing so seized if the court is sagtisfied 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 house, room or place is used a common gaming-house and the persons found therein were then present for the purposes of gaming although no gaming was actually seen by the Magistrate or the Police Officer or by any person acting under the authority of either or them :

Provided that the aforesaid presumption shall be made not-withstanding any defect in the warrant or order in pursuance of which the house room or place was entered under section 6, if the Court considers the defect not to be a material one."

3. Section providing special and different rule of evidence or procedure-Not ultravires –Case under-Bombay Act, Sec. 7

It is contended that the section provides a special and a difficult rule of evidence or procedure in the case of persons tried for offences under the provisions of this differents is not justifiable and thus offends against the provisions of Article 14. We are not able to accept this submission also. On the principles which we have discussed the State is entitled to provide special procedure and rules of evidence for prosecutions in respect of certain class of offences, provided such differentiation is reasonable and has relation to the object and

purpose of the legislation. Sec. 7 provides a special rule of evidence in respect of a class of persons and things when they are in a place which is raided by a police officer empowered by a general order or by a special warrant under sec. 6 and when an instrument of gaming has been seized from such premises. It further raises a presumption in respect of the premises also. There is no doubt, therefore, that this different rule of evidence is made applicable to a group of persons but is based on an intelligible differentia and it would hardly require any stressing to show that it has a direct relation to the object of the stature Time and again the supreme Court has upheld such special rules either of procedure of evidence where they are found to fulfill the two way test disclosed above. We have no hestitation, therefore, in rejecting this submission also.

We have carefully examined the challenge made to the vires of both section 6 and 7 and in our judgment, there are no grounds to come to the conclusion that other of the sections offends in any manner against the provisions of Article 14. *Ramlobhaya thakardas v State [1967] 8 GLR 145.*

4. When presumption arises under section 6-A case under section 7 Bombay Act.

The first question for us to take into consideration is, when does the presumption arise under section 7 and in repeat of what. On the analysis of section 7 we find that (1) the presumption would arise in either of the two categories of cases :- (i) when any instrument of gaming' has been seized in any house, room or place entered under section 6 ot on the person of any one found therein, (ii) 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 thing so seized was an instrument of gaming ; (2) The presumption that then arises is in respect of the place and also persons found therein; (3) The presumption that actually arises is that the seizure of such instrument or thing shall be evidence, until the contrary is proved, that :-

(a) such house, room or place is used as a common gaming house and,

(b) the persons found therein were then present for the purpose of gaming although no gaming was actually seen by the officer entering the premises under the authority of section 6. There is a proviso to this section which only lays down that notwithstanding any defect in the warrant or order in pursuance of which the premises was entered under section 6, if the Court considers that the defect was not very material, the presumption would still arise. Of course, in this case, we are not concerned with the proviso.

The analysis would thus show that in order to enable the raising of the presumption in favour of the prosecution, the prosecution has to establish (a) that what was seized at the time of the raid is an instrument of gaming when such raid is made by a person authorised under

section 6 either from the premises itself or from the person of the individuals present there, on (b) if the articles so seized are not per se instruments of gaming then the Court has to be satisfied that the police officer who entered such premises had reasonable grounds for suspecting that the thing so seized was an instrument fo gaming. So in the first case the thing seized must on its face has to be shown to be an instrument of gaming. In the other case, the Court has to be satisfied that the police officer had reasonable grounds to suspect that the thing so seized was an instrument of gaming. Many courts have held that the mere fact of find of cards and money exposed at the place of the raid or even on the person of those present there, by itself does not make them instruments of gaming. Money and cards can be there for an innocent game and not necessarily for the purposes of playing a game which would be of the nature of wagering or betting.

Mr. Thakore staressed that in order to enable the prosecution _____ upon the presumption arising under section 7, it will have to be shown to the satisfaction of the court that the Police Inspector Mankad had reasonable grounds to suspect that these cards and the money that were found and attached at the time of the raid were instruments of gaming and that the evidence even if taken at its best, does not go to establish these ingredients. Now, it would as well be convenient to note at this stage the definitions of "gaming" and "instruments of gaming". So far as the definition of gaming its concerned, only a part of the definition is relevant for our purposes and it is as follows :-

"In this Act 'gaming' includes wagering or betting except wagering or betting upon a house-race, when such wagering or betting takes place ...."

This definition, as can be seen, is an inclusive definition and it only says that gaming would include wagering or betting "Instruments of gaming" is defined as follows :-

"In this Act the expression 'instruments of gaming' includes any article used or intended to be used as a subject 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 winnigs or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming."

This definition is also an inclusive definition. But what we have to note is that any article actually used or intended to be used as a subject of means of gaming would fall within the purview of this definition. Similarly, money which could be shown to be the proceeds of any gaming would also become an instrument of gaming.

Mr., Thakore argued that having regard to the definitions and the provisions of sec 7, it would not be enough for the prosecution to establish Through the month of P.I. mankad that he thought that the game that was being played was gambling. As the evidence stands, it can only be said that the game that was being played was in the opinion of P.I. Mankad, gaming. That would not be sufficient in law. Mr. Thakoer urged that the police officer should

have deposed actually that he had reasonable grounds for suspecting that the cards and money were actually the instruments of gaming. Then only the Court would be in a position to be satisfied that he had reasonable suspicion. The police Inspector had not so deposed and had merely expressed his opinion that the appellants were gaming. According to him, such opinion evidence would not be admissible. The police officer did not even claim that he had actual experience of such games being played by way of gaming. the learned Advocate submitted that the prosecution had, therefore, established only the following circumstances :-

That the appellants were seen sitting in a room playing a game of cards and also with stake, that some money was seen being collected by one of them, i.e. appellant No, 2. and that a panch witness and the P.S.I. had heard the word "Andar Bahar'' being used by one of the appellants. The argument runs that these circumstances were not enough to establish the required ingredients of the second part of sec. 7 to enable the raising of the presumption. He relied for his contention on decision of a Division Bench of this Court in criminal Appeal No. 565 of 1961 decided on November 12, 1962 (State vs. kantilal Nanubhai and others.) That was an appeal against the order of acquittal. Before the High Court it was contended on behalf of the State that the second part of sec. 7 would apply to the facts and circumstances of the said case and the presumption should have been drawn. The learned Judges of the High Court proceeded to answer the question whether the things seized by the police officer from the premises in question were such that Court would be satisfied that the police officer who entered the premises in question had reasonable grounds for suspecting that they were instruments of gaming, in other words, articles either used as a subject or means of gaming or intended to be used as a subject or means of gaming. The learned Judges observed that cards and coins by themselves and without anything more could not be said to be articles necessarily used or intended to be used as a subject or means of gaming. That proposition was conceded by the learned Assistant Government pleader in that case as has been in the present. However, in the said case the following circumstances were relied upon by the prosecution to establish facts entitling them to the benefit of the presumption. They were as follows :-

(1) The finding of cards and coins within the circle in which the nine accused were sitting at the time of the raid,

(2) The joker card with certain writings thereupon and a pencil, and

(3) The fact of the accused having thrown away the cards and coins and the fact of their having extinguished the candle which was burning in the centre as soon as the police party was seen by them.

The learned Judges observed that the writing on the joker card, however, were in some of a code and no attempt was made to decipher that code in order to ascertain what exactly those writing were. If the writings had been deciphered and they constituted a record either of the bets or of the winnings or profits, it would be a circumstance which would have contributed towards the prosecution case. But that being not so, they were not prepared to consider it as a circumstance which would go to help the prosecution to establish to the satisfaction of the Court that the officer raiding the place had reasonable grounds to suspect the articles seized to be used for purposes of gaming. The appeal was dismissed.

Mr. Thakore tried to press upon us the submission that the circumstances in the present case are very much in a line with those that existed in the said case. He argued that in the present case also, the only circumstances established were that cards and money were found within the circle where the appellants had been found playing and that some amount was recovered from their person. the only other circumstances that are present in the instant case are that an aluminum cup with a small amount of money there in was found with appellant No. 2 and that they had heard the words *Ander Bahar uttered* by one of the appellants. These two latter circumstances, according to Mr. Thakore, would not carry the case of the prosecution any further just as the facts of the find of a pencil and something written on a joker card did not in the case just mentioned above. Just as the Scrbblngs on the joker card were not decphered or proved to be any evidence of betting etc, In the present case, the prosecution has not proved and the police inspector made no effort whatever to establish that the game Andar Bahar was such a game as could be sad to be gaming within the meaning of the provisions of the Act.

We are unable to accept this line of argument to be justified or correct. We do agree that in the circumstances of the aforesad case, the Court could not have come to any other conclusion. But we are unable to agree with Mr. Thakore that the same conclusion should be reached even on the facts of the present case and for very good reasons that we shall presently discuss.

Mr. Nanavati on behalf of the State submitted that the cards and coins which were found exposed together with the fact that the metal cup in which an amount of Rs. 5-10 was found with appellant No. 2 and particularly the fact that the words Ander Bahar which is known to be a game of card for gambling were heard used are sufficient circumstances and facts to constitute "reasonable grounds" for the police Inspector who entered the room under the authority of sec. 6, for suspecting that the cards, money on the ground and the person of the accused (appellants) and the metal cup with money were instruments of gaming. We find that there is lot of strength in the submission made on behalf of the State. The contention raised on behalf of the appellants that the presumption could have only arisen if the police Inspector were to depose that the game *Ander Bahar* is, as a matter of fact gambling and further that he had knowledge of it, and which could only have satisfied the ingredients of sec. 7 to enable the presumption to be raised, in our opinion, goes too far in the circumstances of the present case. It is true that if in this case determination of the question depended only on the opining of the police Inspector that appellants were gambling, the prosecution could not have claimed the advantage of the presumption under sec.7. The police Inspector certainly could not be said to be an expert and as a matter of that in the case of gambling it cannot be said that anybody's opinion could be entertained in evidence as an opinion of an expert under sec. 45 of the Evidence Act. But here there is something more and positive which we are satisfied would be sufficient reasonable ground for the police Inspector for suspecting that the things attached were instruments of gaming. That fact is, as pointed out by the learned Assistant Government pleader, the use of words Ander Bahar by one of the players that definitely indicated that they were playing the game of Ander Bahar.

It is true that the P.I. has not deposed as to how this game of card is gambling or gaming within the meaning of the Act and it not been for some further fact which comes to the help of the prosecution, we would have been inclined to accept the contention raised on

behalf of the appellant that the prosecution evidence felt short of the proof of required facts to raise the presumption. That fact is that the game of Ander Bahar is held and recognized by a Court of Law to be gaming within the meaning of the Act. We have merely to refer on this aspect to the decision of Emperor u. mahomed Dawood,[49 BLR page 603]. In the said case also the game concerned was pat or Ander Bahar. It appears that actually in that case the punter had described that the game that was being played was Ander Bahar and it was also tried to be explained as to how that game was being played. The learned Government ploader in that case, in order to explain how the game is played and how it amounts to gaming, had demonstrated it in Court. It was pointed out that this game inevitably resulted in the banker or the conductor of it thanking some profit of the game beyond the chances of some other players. Not only that, it further disclosed that it was a mere game of chance in which skill has no part to play. The requirement of sec.7 to enable the presumption to be raised is only this that the Court must be satisfied that the police officer entering in the premises with authority under sec. 6 and who seized the things there had reasonable grounds to suspect that the things seized were instruments of gaming. As pointed out hereinabove, the game of Bahar is known to be a game for years to be a game played for gambling and even in the judicial pronouncement it is held to be gaming. Now, the picture that emanates from the evidence led before the Court in this case is clear that the appellants were found not only playing with card and money sitting in a round, but they were actually observed staking the money, one of them was also seen collecting some money and putting it in aluminium cup and further that the word Ander Bahar was actually heard by one of the palchas and the P.I. As pointed out, this game Ander Bahar is notorious as a card game played for gambling or gaming. Under these circumstances there is hardly any justifiable reason for any Court of law not to feel satisfied that the P.I. on seeing this with his own eyes and after hearing actually the word Ander Bahar which would clearly indicate to P.I. as to what the game was that was being played, had reasonable grounds to suspect that the article used and which were ultimately seized, that is to say, the cards and the coins were instruments of gaming. We therefore, do not find any justification to come to the conclusion that there was no reasonable ground for the P.I. to suspect that the cards, moneys and the metal cup with money seized were articles used or intended to be used as subject or means of gaming. The result is that the learned magistrate was right in raising the presumption under sec. 7. *Ramlobhaya Thakardas u.State,* ***(1967)8 GLR 145.***

5. Presumption about persons present in the room raided.- presumption that persons present in the room raided were there for the purposes of gambling -Burden to prove contrary- Failure-Effect-It is not disputed that instruments of gaming were seized from the premises in question in both the appeals. That circumstance, according to the section, “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 there in were present for the purpose of gaming, although no gaming was actually seen.” The profit or gain mentioned in clause (ii) of the definition and also the other requirements of that clause are a matter of peremptory presumption which has to be raised by the court as the seizure of instruments of gaming from the place in question is proved, as is the case here. Admittedly, there is no evidence in rebuttal of the presumption which must therefore be raised and which furnishes a good basis for the conviction of the appellants. *Jagatsingh u*.State of Gujarat,**Atr1979 SC 857.**

6. Presumption when instruments of gaming recovered.- Instrument of game recovered from house of accused-Burden of proof is on accused to establish that house was not used as a common gaming house-Accused not discharging burden of proof-Held, Magistrate erred in not applying presumption under section and acquitting accused.

The said provision on the other hand casts the burden on the accused persons to adduce evidence in rebuttal to establish that the house from which the instruments of gaming were recovered was not being used as a common gaming house.

From the seizure memo (Exp.I), it is established that during the course of search of the house of accused kundanmal, certain articles viz., dice, two sets of cards, currency notes and a piece of cloth were recovered from the said house. The said seizure memo has been proved by Badri Singh (PW 1) and salig Ram (PW 2) who are the attesting witnesses to the same as well as by the S.H.O. Narpat Singh (PW 3). The presumption under section 6 of the ordinance is, the present case and it was for the accused persons to adduce evidence to establish that the said house was not being used as common gaming house. In the absence of such evidence having been adduced by the accused person the learned magistrate ought to have that the house of accused was used as a common gaming house and the accused persons who were found therein were present for the purpose of gaming. The learned magistrate thus erred in not applying the said presumption and in acquitting the accused person on the view that it had not been established that the house of accused kundanmal was not being used as common gaming house at that time. The State Raj. u. Shri kundanmal and Anr.,**1978 Cr.LR (Raj.) 692**.

7. Found, meaning of - The person was seen coming out of the premises and also seen trying to escape put was arrested is found within the premises. It does not mean that the person accused should be physically present there when the search was made. Gulab u. State, **1962 RLW 355= ILR 1962 Raj. 240,** Fazal Ahmed u. Queen, (Pun. Record189NO.35).

(6) The recovery of marked or signed currency notes is by itself entirely insufficient to justify the conviction of accused in case of gambling. Ramchandra u. State,**ILR 1960 Raj.842=1960 RLW 528.**

8. Instruments of gaming-currency notes and coins- Initially, the currency notes and coins are not by itself an instruments of gaming. The fact that police employed a bogus punter and gave him the signed currency notes or market coins to trap public gambling and that the marked coins or signed currency notes were recovered upon execution of search warrant, it was held that such coins and currency notes were instruments of gaming as they were used as a means of gaming. chiman lal u. State, **1957 RLW 544= AIR 1958 Raj. 355**

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7. Penalty on persons arrested for giving false names and addresses.- If any person found in any common gaming house entered by any magistrate or officer of police under the provisions of this ordinance, upon being arrested, by any such officer or upon being brought before any magistrate on being required by such officer or magistrate to give his name address, shall refuse or neglect to give the same, or shall give any false name or address, he may upon conviction before the same or any other magistrate be adjudged to pay any penalty

not exceeding five hundred rupees, together with such costs as to such magistrate shall appear reasonable and, on the non-payment of such penalty and costs, or in the first instance, if to such magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Instruments of gaming found therein to be destroyed and may also order all or any of the securities for money and other articles seized not being instruments of gaming to be sold and converted into money and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. Proof of playing for stake unnecessary. –It shall not be necessary, in order to convict any person of keeping a common gaming house, or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake.

10. Magistrate may require any person apprehended to be sworn and give evidence.- It shall be lawful for the magistrate before whom any person shall be brought, who has been found in any house, room, tent, enclosure, vehicle, space, vessel or place, entered under the provisions of this ordinance, to require any such persons to be examined on oath or solemn affirmation and give evidence touching any unlawful gaming in such house, room, tent, enclosure, vehicle, space, vessel or place or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room, tent, enclosure, vehicle, space, vessel or place or any part thereof , of any magistrate or officer authorized as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other magistrate or by or before any court on any proceeding or trial in any ways relating to unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matter aforesaid, on the ground that his evidence will tend to criminate himself. Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be)of the Indian penal code, 1860 of the central legislature.

11. Witnesses indemnified.- Any person who shall have been concerned in gaming contrary to this ordinance, and who shall be examined as a witness before a magistrate on the trial of any person for a breach of any of the provisions of this ordinance, relating to gaming and who upon such examination, shall in the opinion of the magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, **shall** for anything done before that time in respect of such gaming.

12. Ordinance not to apply to certain games.- Nothing in this ordinance shall be, held to apply to any game of mere skill, as distinguished from a game of chance or a game of chance and skill combined, unless it is carried on in a common gaming house.

COMMENTARY

Game of Rummy is not a game of mere chance-section applies (Case u/s. 14 Hyderabad Act).

We are also not satisfied that the protection of section 14 is not available in this case. The game of Rummy is not a game entirely of chance like the three card game mentioned in the madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy on the other hand, requires certain amount of skill because the fall of the cards has to be memorized and the bundles up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The change is Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out there is an element of chance because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it. Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes the offence may be brought home.State of A.P.U.k. Satyanaranaya, **AIR 1968 SC 825.**

[2] Game of video Games is a game of skill-play of such a game is exempted-No cognizance can be taken-Action Taken quashed. Tulsiram u.State of Rajasthan,**2002(3) WLN 55.**

[3] Arrow dart game is a game of skill. FIR quashed. Babubhai u.State of Rajasthan,**1998Cr L J 565=1998 Cr LR 18** (RAJ).

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13. Gaming and setting birds and animals to fight in public streets ; Destruction of instrument of gaming found in public streets.- A police officer may apprehend without warrant any person found gaming in any public street, place, or thoroughfare; or

Any person setting any birds or animals to fight in any public street, place or thoroughfare; or

Any Person there present aiding and abetting such public fighting of birds and animals;

Such person, when apprehended shall be brought without delay, before a magistrate, and shall be liable to a fine not exceeding [one hundred rupees.] or to imprisonment either simple or rigorous for any term not exceeding [one month].

Any such police officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest and the magistrate may on conviction of the offender order such instruments to be forthwith destroyed.

[3]**[Explanation.**-For the purposes of this section, the term "public place "shall also include a place to which the members of public or any section thereof have open access, whether as of right or otherwise.]

COMMENTARY

[1] **'Public place '-Meaning of 'Gaming'-Evidence of-Applicability of the presumption of S. 6.**

In order to determine whether a place is a 'public place' within the meaning of the term as used in S. 13 of the Rajasthan Public Gaming Ordinance, the test is whether members of the public have, as a matter of fact, a free access to it. In this case, the accused were found playing with cards on a Chabutra in front of a shop, which abutted on the road. The shop was closed at the time and anybody passing on the road could have an access to, and use of the Chabutra. It was held, that the Chabutra at the time, was a 'public place'. [AIR 1927 All.560 and 1952 Hyd., 147], distinguished.[(1954) ALJ (Vol.52)487],relied on. It was further held that simply because cards and a change of -/12/-were found on the chabutra, it could not be definitely said that the accused were engaged in gaming.

The presumption of S. 6 of the ordinance would not be available in the case, as there was no allegation that the place was a common gaming house. mohan Lal u. State, **ILR (1956) 9 Raj. 1017**.

[2] **Case under-Accused should be found actually gaming in public street, place or thoroughfare when caught.**

The gist of the offence under s. 13 of the Rajasthan public Gambling Ordinance, 1949, is that a person should be found gaming in any public street, place of thoroughfare. That means that the accused should be actually gaming in such place when caught. In the absence of allegation that accused was actually found gaming in any public street, place or thorough-fare, no case can be made out under S. 13 of the ordinance-State u. *Pyare Lal*, **ILR (1952) 2 Raj. 701=AIR 1953 Raj. 101.**

[3] **Evidence in a case of gambling-solitary testimony of a punter-Recovery of market or signed currency note.**

1-Subs. by Act 17 of 1982

2- Subs. by Act 17 of 1982

3- Subs. by Act 17 of 1982

Testimony of a punter, such evidence being tainted, and the ----------always require independent corroporation of his evidence before a conviction can be founded on it. [AIR 1937 Bom. 385, 1948 Bom. 253 and 1954 M.B. 145 referred.

The recovery of a market or signed currency note is by itselfentirely insufficient to justify a conviction in accuse of gambling. *Ramchandra* u.The State **ILR (1960) 10 Raj.842=1960 RLW 525.**

[4] **Arrow Dart game is not a game of chance.-** Arrow Dart game is a game of skill and is not gambling. The discussion given in AIR 1933 CAL 8 relied on and followed. Babu Bhai u. State,1998 (1) RCD 96 (Raj).

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14. Offences by whom triable.- Offences punishable under this ordinance shall be triable by any magistrate having jurisdiction in the place where the offence is committed.

But such magistrate shall be restrained within the limits of his jurisdiction under the code of criminal procedure, as to the amount of fine or imprisonment, he may inflict.

15. Penalty for subsequent offence under section 4.- Whoever, been convicted of an offence punishable under section 4 of this ordinance shall again be guilty of any offence punishable under that section, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of such offence.

16. Portion of fine may be paid to informer.- The magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this ordinance, or any part of the moneys or proceeds of articles seized and ordered be forfeited under this ordinance, to be paid to an informer.

17. Recovery and application of fines.- All fines imposed under this ordinance may be recovered in the manner prescribed by section 386 of the code of criminal procedure, 1898, of the central Legislature.

18. [1][omitted].

19. [2][omitted].
