

1967

Present : G. P. A. Silva, J.

B. WEERASINGHE, Appellant, and R. H. M. KARUNARATNE
(Police Sergeant), Respondent

S. C. 222/67—M. C. Galle, 27924

Unlawful betting on horse-racing—Quantum of evidence—Elements necessary to constitute a proper search by a police officer—“ Premises ”—Betting on Horse-racing Ordinance (Cap. 44), ss. 2, 3 (3), 11 (2), 17, 19 (b).

The presumption of being guilty of the offence of unlawful betting on a horse-race would not arise under section 19 (b) of the Betting on Horse-racing Ordinance unless the instruments of unlawful betting found in the possession of the accused person were found in consequence of such a search of premises as was in conformity with the requirements of section 17. The possession by a person of betting slips or other material which may be deemed to be instruments of unlawful betting does not by itself constitute an offence.

The evidence in the present case was that a police party did not set out on any information received in regard to any unlawful betting being carried on in any premises but that, while they were proceeding along a road, they came across the accused by accident and, when he was searched on suspicion, found in his possession certain instruments of unlawful betting.

Held, that there was a clear contravention of section 17 (2) of the Betting on Horse-racing Ordinance because the police officer who made the search did so without recording the grounds of his suspicion and, secondly, because there was no proof that the documents in question were contained in any "premises" within the meaning of that word as defined in section 2.

APPEAL from a judgment of the Magistrate's Court, Galle.

A. H. C. de Silva, Q.C., with *K. C. Kamalanathan* and *V. Selvarajah*,
for the Accused-Appellant.

Faisz Mustapha, Crown Counsel, for the Attorney-General.

May 9, 1967. G. P. A. SILVA, J.—

The accused-appellant in this case was charged with the following offence, namely, that he did on the 15th June, 1966 bet unlawfully on a horse-race by having in his possession instruments of unlawful betting, to wit: betting slips, payment chits, sporting cards, etc., in breach of section 3 (3), read with section 19 (b) of the Betting on Horse-racing Ordinance (Chapter 44 of the Legislative Enactments), and with having committed an offence punishable under section 11 (2) of the Betting on Horse-racing Ordinance. The evidence in this case consisted mainly of that of a Sub-Inspector of Police who stated that on the day in question he and a police party were proceeding towards Matara on the Galle-Matara Road when he saw a man standing by the road-side who, on seeing him, hid a parcel in his breast under his shirt. On suspicion he stopped the Land Rover in which he travelled, went up to him and searched and found a parcel which contained cash Rs. 15 in an envelope, 4 betting slips which contained the names of three horses, two sporting cards, one pencil, one piece of carbon and one small bill book. The Sub-Inspector also stated that the accused had no permit or licence to accept bets or to have the betting slips in his possession.

The learned counsel for the appellant does not contest this evidence but he argues that the search of this person has not been made in accordance with the provisions of the Betting on Horse-racing Ordinance. The word "instrument of unlawful betting" is defined in the Ordinance and what was found in the possession of the accused could come within the definition of instruments of unlawful betting. Under section 3 (3) any person who—

(a) makes or places a bet on a horse-race other than a taxable bet, or

(b) receives or negotiates a bet on a horse-race other than a taxable bet, shall be deemed to bet unlawfully on a horse-race and shall be guilty of an offence. Section 19 (b) enacts that any person who is found in possession of any instrument of unlawful betting on the occasion of

his being searched under this Ordinance, shall be presumed, until the contrary is proved, to be guilty of the offence of unlawful betting on a horse-race. The important words under this section are “on the occasion of being searched under this Ordinance”. The presumption would therefore apply only to a person who has been searched under the provisions of this Ordinance and certain instruments of unlawful betting are found in his possession. In order to consider whether a person has been searched under this Ordinance, one has to look at section 17. Section 17 (1) provides that a search warrant may be issued by a Magistrate to search the premises, upon the Magistrate being satisfied that there is reason to suspect that any offence against this Ordinance or any regulation made thereunder is being or has been committed, or that there is any document or thing directly or indirectly connected with any such offence, in any premises. The facts in this case do not fall within the provisions of sub-section 17 (1). The only other search that is contemplated under this Ordinance is one under section 17 (2). This sub-section requires that where a police officer of or above the rank of Sergeant in charge of a police station has reason to suspect that any such offence, that is to say, an offence referred to in section 17 (1), is being or has been committed, or that there is any such document or thing, in any premises and that a search warrant cannot be obtained under sub-section (1) without affording the offender an opportunity to escape or of concealing evidence of the offence, he may, after recording the grounds of his suspicion exercise all or any of the powers which could have been conferred on him by sub-section (1). The premises contemplated in this section would be premises which are defined in section 2. It would thus appear that there was a clear contravention of section 17 (2) because the police officer made a search of the accused without recording the grounds of his suspicion and secondly because there is no proof that the documents in question were contained in any premises, as contemplated by the Ordinance. On the evidence it is clear that the police party did not set out on any information received in regard to any unlawful betting being carried on in any premises but they came across the accused by accident as they were proceeding on some other business towards Matara-Galle Road. On a consideration of the provisions of section 19 (b), it would appear that the possession of betting slips or other material which may be deemed instruments of unlawful betting by any person does not by itself constitute an offence. The presumption of being guilty of the offence of unlawful betting would only arise if such person were to be found in possession of such instruments during a proper search of premises within the meaning of the Ordinance. Crown Counsel has very properly indicated that he is unable to support this conviction.

For the above reasons I set aside the conviction and sentence and acquit the accused.

Appeal allowed.