

1966

Present : Sansoni, C.J.

GALAHITIYAWA, Appellant, and INSPECTOR JOSEPH, Respondent

S. C. 849-869—M. C. Kandy, 39009

Charge of unlawful betting on a horse-race—Burden of proof—Search warrant—Material on which it may be issued—Betting on Horse-racing Ordinance (Cap. 44), ss. 3 (3), 11 (2), 17, 18, 19.

A search warrant under section 17 of the Betting on Horse-racing Ordinance may be issued by a Magistrate upon evidence on which he has every reason to suspect that an offence against the Ordinance is being committed.

In a prosecution for accepting an unlawful bet on a horse-race the burden is on the accused person to prove that the bet in question was a taxable bet.

Newspapers and leaflets may be produced by the prosecution as evidence to prove that the bet which was placed or accepted was on horse-races.

Once the search-warrant is held to have been properly issued and executed, the burden is on the accused to rebut the presumptions created by sections 18 and 19 of the Ordinance.

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

G. E. Chitty, Q.C., with *Eardley Perera, A. S. Vanigasooriyar* and *Nimal Senanayake*, for the accused-appellants.

R. Abeysuriya, Crown Counsel, for Attorney-General.

Cur. adv. vult.

October 10, 1966. SANSONI, C.J.—

The preliminary proceedings in this case consisted of an application by Inspector Joseph for a search warrant under section 17 of the Betting on Horse-racing Ordinance, Cap. 44. The application was supported by an affidavit of the Inspector, and the Magistrate recorded the evidence of one John Singho and constable Premaratne on the 22nd August, 1964, which was the day on which the application was made.

As Mr. Chitty argued that the search warrant was issued on insufficient material, I shall briefly set out what these witnesses said. John Singho stated that on the previous afternoon he was searched by Inspector Joseph. He had no money or instruments of unlawful betting on him. He was given a chit on which the names of two horses were written in duplicate and a Rs. 5/- note, and was asked to go to No. 25, Castle Hill Street, to the first floor of Sinhagiri Hotel, and place two bets for a win and a place on the horses named in the chit.

He went there and found two persons seated at a table who were accepting bets. One of them gave him one half of the chit and kept the other, after making an entry on both halves. He produced the half given to him: Rs. 2/- was retained by them. Constable Premaratne in his evidence referred to Inspector Joseph writing out the names of the two horses in duplicate from what he called a Sporting Card (P2). He accompanied John Singho to the first floor of the Sinhagiri Hotel, where there were two persons seated at a table accepting bets on horse races. One of them took the chit from John Singho and returned half to him, after making an entry on it. He was also given Rs. 3/- out of the Rs. 5/-. Premaratne said that there were several other persons who came there and placed bets. On this evidence the Magistrate said that he was satisfied that the offence of accepting illegal bets was being committed on those premises, and he issued a search warrant.

The leaflet P2 contains news about horse races, and programmes of races to be run in England. Amongst those races were the Seven-Oaks Plate in which Tamerlina was running and the Covert Side Handicap Plate in which La Tristesse was running. Those were the two names written by Inspector Joseph on the chit. It is idle to pretend that any person seeing a leaflet like P2 would not know, when he read it, that it refers to horse races to be run that day at Lingfield Park in England. It should be read with the names on the betting slip, and it throws light on the names written on the slip. The Magistrate had every reason to suspect on the evidence placed before him that an offence against this Ordinance was being committed, and he acted quite correctly in issuing the search warrant. If he had not come to that conclusion he might have been thought to be too picky. Lord Goddard C.J. once said: "Although I do not know that Judges have any judicial knowledge of fish shops, we do have such knowledge as can be gained by walking about and using our eyes", and I think a Magistrate can recognize a horse-race programme when he sees it.

Mr. Chitty argued that leaflet P2 should have been produced by Inspector Joseph. But Premaratne identified P2 as the document from which Inspector Joseph got the names of the horses for the purpose of writing the betting slip. There was no further evidence needed in respect of P2.

On the afternoon of 22nd August, Inspector Joseph gave the same decoy an All-on chit in duplicate with the names Resistance and Poppy, and a marked Rs. 2/- note, and asked him to go to the same place and place the bet. Premaratne was told to watch the transaction. 1st accused took the chit, wrote a number on both halves, and gave the decoy one half and retained the other. 2nd accused accepted the money and returned Rs. 3/- to him.

A little later Joseph followed them there. He then found one copy of the All-on chit on the first accused and the other copy with the decoy. Second accused had the marked Rs. 2/- note. On the table at which

the two accused were seated, there was a newspaper or leaflet with particulars of races to be run that day. There was Rs. 867/95 in a drawer which was in second accused's charge, while the first accused had several All-on chits. All the other accused had All-on chits and leaflets with particulars of races to be run. In the leaflet which was on the table, amongst particulars of races, Resistance and Poppy were mentioned as two of the horses running in the Front Plate and the New-chapel Handicap respectively.

The Inspector also produced copies of the Daily Telegraph and the Times of 22nd August, 1964, in which Resistance and Poppy were mentioned as running in those two races at Lingfield Park. The particulars in these two newspapers were found to be identical with the particulars appearing in the leaflet found on the table. They were relevant evidence making it more probable, according to common sense and common knowledge, that the races mentioned were proposed to be run that day at that place.

No evidence was led for the accused. The learned Magistrate convicted all of them except 3rd accused (who was absent at the trial) of the following charges :—

“ (1) 1st and 2nd accused received or negotiated a bet to wit an “ All-on ” bet for Rs. 2/- comprising of a bet for Rs. 1/- for ‘ Win ’ and a bet for Rs. 1/- for ‘ Place ’ on two horses named “ Resistance ” and “ Poppy ” supposed to be run in the Lingfield Park in England on 22nd August, 1964 from one K. K. John Singho, other than a taxable bet in breach of Section 3 (3) (b) of Chapter 44 of the Legislative Enactments of Ceylon and thereby committed an offence punishable under Section 11(2) of Chapter 44 of the Legislative Enactments of Ceylon read with Section 18 of Chapter 44 L. E. C.

(2) At the same time and place aforesaid the abovenamed 3rd to 22nd accused make or place with the 1st and 2nd accused abovenamed bets on Horse Races proposed to be run at Lingfield Park in England, on 22nd August 1964 other than taxable bets in breach of Section 3 (3) (a) of Chapter 44 L.E.C. read with sections 18 and 19 and thereby committed an offence punishable under section 11 (2) of Chapter 44 of the Legislative Enactments of Ceylon.”

I think greater care should have been taken to draft the charges in correct English, with a little more attention to the wording of the Ordinance. The Magistrate correctly held that the bet accepted by 1st and 2nd accused had not been proved to be a taxable bet, and the burden of proving that was on them—See *Lantis v. Musufer*¹. He also held, correctly in my view, that there was sufficient evidence, on the newspapers and leaflets produced by the prosecution, to prove that the bet placed and accepted was on horse-races, in the absence of any evidence to rebut such prima facie proof. See *Mihindukulasuriya v. David*².

¹ (1948) 49 N. L. R. 334.

² (1956) 57 N. L. R. 382.

But the most important evidence of all in favour of the prosecution comes from the presumptions created by sections 18 and 19 of the Ordinance. Once the search warrant is held to have been properly issued and executed, the premises in question are presumed, until the contrary is proved, to have been kept or used for the purpose of unlawful betting on a horse-race, since instruments of unlawful betting were found in them and upon persons found therein—Section 18. Further, and also arising out of section 18, all these accused were not only found in premises so presumed to have been kept or used for that purpose, but were also proved to have been in possession of instruments of unlawful betting. They are therefore presumed, until the contrary is proved, to be guilty of the offence of unlawful betting on a horse race—Section 19. Since no evidence was adduced to the contrary, these presumptions remained unrebutted and the charges were proved.

It may not have been strictly necessary, in the charges framed, to specify that 1st and 2nd accused received or negotiated (count 1) or that 3rd to 22nd accused made or placed (count 2) bets on horse-races, since the offence in either case is betting unlawfully on a horse-race. The presumptions already mentioned apply, even though more particulars were furnished in the charge than the accused were entitled to.

The appeals are dismissed.

Appeals dismissed.
