

1956

*Present : Sansoni, J.*

MIHINDUKULASURIYA, Appellant, and L. DAVID (S. I. Police),  
Respondent

*S. C. 1471—M. C. Matara, 11,891*

*Betting on Horse Racing Ordinance (Cap. 36), as amended by Ordinance No. 53 of 1943—Prosecution thereunder—Quantum of evidence—“ Instruments of unlawful betting ”—Sections 2, 3 (3), 10, 11—Newspapers—Evidentiary value of their contents—Evidence Ordinance, s.51.*

The accused was charged with unlawful betting on a horse race in breach of section 4 (3) of the Betting on Horse Racing Ordinance. It was proved by the prosecution that a police officer arrested the accused and on searching him found betting slips and copies of three different newspapers each of which contained the race programme in Colombo for the day in question.

*Held*, that, although section 51 of the Evidence Ordinance created no presumption that the contents of a newspaper or journal are true, the fact of publication of the race programme containing the names of the horses mentioned in the betting slips could be considered in interpreting whether the betting slips were records of unlawful betting on a horse race within the meaning of the definition of “ instruments of unlawful betting ” in section 2 of the Betting on Horse Racing Ordinance.

**A**PPPEAL from a judgment of the Magistrate’s Court, Matara.

*Vernon Wijetunge*, for the accused appellant.

*Daya Perera*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

February 27, 1956. SANSONI, J.—

The accused-appellant was charged with having committed the offence of unlawful betting on a horse race in breach of s. 3 (3) of the Betting on Horse Racing Ordinance (Cap. 36), an offence punishable under s. 10 of the Ordinance. The prosecution evidence, which the learned Magistrate accepted, showed that Sub-Inspector Abrahams, on receipt of certain information, noted down his reasons as to why a search warrant could not be obtained to search a certain garage in Matara. He then went with some other Police officers in a Land Rover which was stopped opposite the garage in question. When he got down from it the accused ran away from the garage. The Sub-Inspector arrested him and on searching him found two betting slips, a copy of the “ Times of Ceylon ” containing the Colombo race programme for the day in question, a copy of “ Anj’s Sports News ” and a copy of the “ Sporting News ”, both of which contained the same race programme. The two betting slips had the names of horses which, according to the published race programme, were due to run in the Colombo races to be held on that day, and the details on those slips indicated that those horses had been backed for Wins and Places.

The accused gave evidence and called a witness in an attempt to show that no such documents were found on him, but his Counsel did not challenge the Magistrate's findings of fact.

It was urged, however, that the evidence led for the prosecution did not establish that the horse races, in respect of which the accused was charged with unlawful betting, were in fact run or proposed to be run on that day. It was argued that, as the only evidence which the Magistrate had before him on this point were the newspapers I have referred to, there was no proof of an essential ingredient of the offence.

The question whether the production of a newspaper containing a race programme is sufficient to prove that the particular races mentioned in that programme were races which were proposed to be run was considered by Soeretsz, J., in *Iyer v. Karunaratne*<sup>1</sup>. The learned Judge held that the production of "The Racing Guide Sporting News" which had been registered as a newspaper established a prima facie case that the races appearing in its race programme were races proposed to be run. He applied the presumption which was said to arise under s. 81 of the Evidence Ordinance. Now that Section requires the Court to presume the genuineness of every document purporting to be a newspaper or journal. In other words, the newspaper or journal is admissible in evidence without formal proof. There is no presumption that the contents of the newspaper or journal are true, for, as Fforde, J., said in *Bawa Sarup Singh v. The Crown*<sup>2</sup>, "the paper itself is not proof of its contents. It would merely amount to an anonymous statement".

Since the case of *Iyer v. Karunaratne* was decided, however, the Ordinance has been amended in certain respects by Ordinance No. 55 of 1943, and among other changes a new s. 17 has been added. That Section provides that any person who is found in possession of an instrument of unlawful betting on the occasion of his being searched under the Ordinance shall be presumed, until the contrary is proved, to be guilty of the offence of unlawful betting on a horse race. On the evidence of the prosecution witnesses the accused, who was proved to be a person who had been searched under the Ordinance, was clearly a person against whom this presumption could be drawn if the betting slips in question were "instruments of unlawful betting".

When we turn to s. 2 of the Ordinance, as amended, we find that expression defined as meaning:

"any article or thing used or intended to be used as a subject or means of unlawful betting on a horse-race, or any document used or intended to be used as a register or record or evidence of any unlawful betting on a horse-race."

The Sub-Inspector in his evidence explained what the betting slips meant, and on that evidence the learned Magistrate was entitled to hold that those slips were documents used or intended to be used as a record or evidence of unlawful betting. The prosecution had, however, to prove that such betting was on a horse-race. It sought to prove that by the

<sup>1</sup> (1911) 21 C.L.W. 133.

<sup>2</sup> A.I.R. (1925) Lahore 299.

production of the three newspapers, all of them containing the race programme for the day in question. The fact of publication of the race programme containing the names of the horses mentioned in the betting slips must be considered in interpreting what those betting slips meant. The only possible interpretation, I think, is that those betting slips were records of unlawful betting on horse races. The use of the newspapers for this purpose does not depend on the contents of the newspapers in regard to the race programme being true. One is entitled to attach some meaning to what appeared in the newspapers in order to throw some light on the meaning of the betting slips.

The accused was not, of course, precluded from showing that the information contained in the newspapers was quite false, in that no such races were scheduled to be run, or that no such horses were entered for such races. But the production of the betting slips and the prima facie proof that they were records of unlawful betting on horse races shifted the burden to the accused to prove his innocence.

Although the accused gave evidence he made no attempt to suggest that the documents said to have been found on him had nothing to do with betting on horse races. He contented himself with a complete denial that any such slips of paper and newspapers were found in his possession. When the learned Magistrate rejected this evidence, the presumption created by s. 17 remained un rebutted.

For these reasons the appeal is dismissed.

*Appeal dismissed.*

