

1945

Present: Cannon J.

PERERA, Appellant, and PERERA, Respondent.

1,324—M. C. Negombo, 41,504.

Lottery—Charge of keeping place of lottery—Evidence of habitual user necessary—Penal Code, s. 288.

Where the accused was charged, under section 288 of the Penal Code, with keeping a place for the purpose of drawing a lottery—

Held, that, to constitute "keeping", there must be evidence of some habitual user of the premises for the purpose alleged.

¹ *Punchi v. Baba Appu et al.*, 3 N. L. R. 170.

² *Queen-Empress v. Sangam Lal*, 15 Allahabad 129 at 131.

A PPEAL against a conviction by the Magistrate of Negombo.

H. W. Jayewardene for the accused, appellant.

A. C. Ameer, C.C., for the Attorney-General.

July 19, 1945. CANNON J.—

On the evidence in this case it is possible that the accused committed an offence, but the question for consideration is whether that offence was the one charged. He was charged with keeping a place, to wit, a house situated at Kimbulapitiya, for the purpose of drawing a lottery contrary to section 288 of the Penal Code. The Magistrate convicted him and sentenced him to 6 months' rigorous imprisonment. Evidence was given that he had printed in Colombo over 100,000 lottery tickets and that in his house were found some books of lottery tickets some of which were complete while others had only the counterfoils on which were the names and addresses of the purchasers of the tickets. One purchaser said that the prisoner told him that the drawing was to take place at his dwelling house on October 17 and there was further evidence that the prisoner had postponed the drawing to December 12, on which date some 200 people assembled at his house, when he told them that the drawing was further postponed.

Mr. Jayewardene for the appellant contends that this evidence does not justify the Magistrate in holding that the accused was "keeping" the house for the purpose of a lottery inasmuch as it is well established that to constitute "keeping" there must be evidence of some habitual user of the premises for the purpose alleged. This so appears in a number of decided cases, both in England and Ceylon particularly *Martin and Benjamin*¹; *Perera and Silva*² and in the cases of *Ludovici and Zoysa* and *Attygale and Perera* which are reported in 1 Appeal Court Reports at pages 142 and 143.

Mr. Ameer in support of the conviction urged that a "keeping" requires no more than using premises over a period of time for a lottery. I agree, but it will be seen from the evidence that the facts testified to do not amount to such continuous user.

It has been pointed out by Mr. Jayewardene that the accused might have been properly charged with cheating under section 403 of the Penal Code or with publication of a proposal for a lottery under the 2nd paragraph of section 288 of the Penal Code, or with selling tickets for a lottery under the Lotteries Ordinance, section 4. The prosecution, however, seems to have selected the charge most difficult to prove. In my view the evidence submitted, though accepted by the Magistrate, does not amount to proof of "keeping" the premises for the purpose alleged. There are no merits in this appeal on the facts, but accused is entitled to succeed on the legal point which has been raised and the conviction is quashed.

Conviction quashed.

¹ (1907) 1 K. B. D. 64.

² (1889) 1 C. L. Rep. 57.