

Present : Drieberg J.

1929.

SUB-INSPECTOR OF POLICE v. JACOLIS PEIRIS *et al.*

258—P. C. Gampola, 19,325.

*Unlawful gaming—Issue of search warrant—Information recorded but not read over—Material—Ordinance No. 17 of 1889, s. 4.*

Information, upon which a search warrant issued, was recorded by the Police Magistrate and attested after the informant had put his mark to the record, but the statement was not read out to the informant.

*Held*, the issue of the search warrant was irregular.

*Garvin*, for accused, appellants.

*Ilangakoon, C.C.*, for complainant, respondent.

June 19, 1929. DRIEBERG J.—

The appellants were convicted of committing unlawful gaming by playing a card game for stakes, an offence punishable under section 4 of Ordinance No. 17 of 1889.

The conviction rests solely on the presumption, drawn under section 9 of the Ordinance, the premises having been entered by the police under a search warrant, and the only question before me is whether the search warrant is regular.

On January 24 last the Police Magistrate had an affidavit sworn to before him by Police Sergeant Gallella that he had credible information that habitual gaming was being carried on in the house of Jacolis, the first appellant; that "thon" was collected by Jacolis, that "the game" was open to the public, that he watched the house on several days and saw people going to and coming from the said house. This material in itself did not justify the issue of a search warrant. Police Sergeant Gallella at the same time produced before the Magistrate his informant, S. Charley. Charley was examined on affirmation; the Magistrate says in his judgment that the affirmation was administered by Sergeant Gallella.

Charley stated that gambling was carried on every day in the house of Jacolis, who organized the gambling and collected "thon"; he spoke to this of his own knowledge, having himself taken part in the gambling. Charley's statement was recorded by the Magistrate; he put his mark to the record and this was attested by the Magistrate.

1929. On this material the search warrant was issued. The question whether this material was sufficient to justify the issue of a search warrant was discussed in the Police Court, but it is not necessary to decide this, for the information by Charley was not properly before the Police Magistrate and the issue of the warrant was therefore irregular.

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DRIEBERG J.  
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Sub-  
Inspector  
of Police  
v.  
Jacolis  
Peiris

In *Parson v. Kandiah et al.*<sup>1</sup> Lyall Grant J. held that where the information given is oral and not written, it could be converted into written information, as required by section 7, if the information given by the informant is read over to him and signed by him; as there was no record that this was done in that case, he held that the information could not be the basis of the issue of the warrant.

In *Parson v. Kandiah et al. (supra)* the informant did not sign the record of his statement, as I find from the record of the case, P. C. Bandarawela, No. 20,553, which I called for. In the present case the informant Charley put his mark to the record but there is nothing to show that it was read over to him. Unless the record of his statement is read over to the informant and signed by him, he thereby accepting it as correct, it is nothing more than a record by another of his statement and cannot be regarded as written information by him.

The only material, therefore, which was properly before the Magistrate was that of Sergeant Gallella, and this was quite inadequate to support the issue of the warrant, the only evidence he could give, apart from what he stated on the information of another, being that he saw people going to and coming from the house.

I set aside the conviction and acquit the appellants.

*Set aside.*

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<sup>1</sup> (1927) 29 N. L. R. 94.