

CROWN CASES

DECIDED IN THE

ORIGINAL AND APPELLATE JURISDICTIONS

OF THE

HIGH COURT OF BOMBAY

REG. V. NA'RA'YAN SUNDAR.

1868.
Jan. 16.

*Competent Witness—Evidence—Gaming—Search Warrant—
Act III. of 1866 (Bombay).*

A person apprehended by the Police and brought before the Magistrate with the accused is, though not discharged by the Magistrate, a competent witness against the accused, provided he be not *charged* along with the accused.

Conviction of keeping a common gaming-house upheld, where portion of the evidence against the accused consisted of instruments of gaming found in such house, which had been entered in pursuance of a search warrant illegally issued, there being sufficient evidence *aliunde* to justify the conviction.

THE accused was convicted, by Hasan Muhammad Farid, Magistrate F. P. in the Thaná District, of having kept a common gaming-house and of gaming, and sentenced, under Secs. 3 and 4 of Act III. of 1866 (Bombay), to pay a fine of Rs. 50.

The case was referred by R. H. Pinhey, Session Judge of Thaná, under Sec. 434 of the Criminal Procedure Code, for the following reasons:—

“The next objection taken for the applicant is that the Magistrate issued his search warrant in this case, without having any sworn information before him. This objection appears to be fatal. * * *

“The Magistrate issued his search warrant on receiving a written report only from the Chief Constable at Thaná.

* * * “Another objection has been raised against the Magistrate's proceedings, namely, that he admitted illegal evidence for the prosecution in examining Bháskar Sundar

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(No. 2) as a witness. Bháskar Sundar was, as appears from his deposition, and from the note on the back of the Magistrate's warrant, one of the persons apprehended and brought before the Magistrate for trial. He was not discharged, for the Magistrate at the end of the proceedings directed his prosecution; and, having been brought up as an accused person before the Magistrate, was not competent as a witness. Sec. 9 of Bombay Act III. of 1866 does not apply to him."

PER CURIAM (COUCH, C.J., and NEWTON, J.):—With regard to the second objection, we hold that the witness, Bháskar Sundar, was not, at the time he was examined, charged with the accused and upon his trial, although he had been apprehended, and that he was by law a competent witness.

With regard to the first objection, we observe that although, under Sec. 5 of Act III. of 1866, a complaint on oath was necessary in order to authorise the issuing of the warrant, yet that the evidence of Bháskar Sundar, if believed (and there was evidence in corroboration of it), was sufficient evidence from which the Magistrate might find the accused guilty of the offence charged. It was not necessary to make use of the finding of the instruments of gaming in the house as evidence that the house was used as a common gaming-house, and that the persons were present there for the purpose of gaming. If it had been necessary to resort to Sec. 6, the objection taken might have been well founded; but that not being the case, the want of a complaint on oath before the issuing of the search warrant does not vitiate the conviction.

NOTE.—“Every person who shall have been concerned in any gaming contrary to this Act, and who shall be examined as a witness by or before a Magistrate on the trial of any charge against the owner, keeper, or occupier, or other person having the care or management, of any common gaming-house, touching such gaming, and who upon such examination shall make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, and who shall thereupon receive from the said Magistrate a certificate in writing to that effect, shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.” Sec. 10 of Act III. of 1866 (Bombay).