

1948

Present : Basnayake J.

GUNAWARDENE, Appellant, and RICHARD (S. I. Police),
Respondent.

S. C. 403—M. C. Kandy, 30,812.

*Betting on Horse-Racing—Possession of betting slips—When is it an offence?—
Chapter 36—Sections 3 (3) (b) and 17 (b).*

The possession of betting slips is not an offence under section 3 (3) of the Betting on Horse-Racing Ordinance. Where, however, premises are searched under the Ordinance, there is a presumption under section 17 that a person in possession of betting slips is guilty of the offence of unlawful betting.

¹ (1880) 6 *Calcutta* 496.

² (1881) 7 *Calcutta* 208.

³ (1908) 11 *N. L. R.* 371.

⁴ (1913) 3 *C. A. C.* 26.

⁵ (1913) 2 *Cr. A. R.* 45.

⁶ (1917) 20 *N. L. R.* 136.

APPPEAL from a judgment of the Magistrate, Kandy.

Bernard Sri Kantha, with *Walter Wimalananda*, for the accused, appellant.

R. A. Kannangara, *Crown Counsel*, for the Attorney-General.

Cur. adv. vult.

June 18, 1948. BASNAYAKE J.—

The accused-appellant was tried on the following charges :

“ That you did, within the jurisdiction of this court at 139, Brownrigg St., Kandy, on December 13, 1947, receive from, negotiate with persons unknown, unlawful bets on horse races proposed to be run in India on December 13, 1947, in breach of section 3 (3) (b) of Chapter 36, N. L. E. C., as amended by section 3 (2) of Ordinance No. 55 of 1943, and thereby committed an offence punishable under section 10, Chapter 36, as amended by section 6 (3) (2) (a) of Ordinance No. 55 of 1943.

2. In the alternative the said accused did in breach of section 3 (3) Chapter 36, as amended by section 3 (3) (b) of Ordinance No. 55 of 1943, have in his possession instruments of unlawful betting, to wit, 14 betting slips in an envelope with letters S. N. with names of horses proposed to be run in India on December 13, 1947, two envelopes, 8 betting slips with names of horses proposed to be run in India on December 13, 1947, lists of accounts in Sinhalese, and thereby committed an offence punishable under section 10, Chapter 36, as amended by section 6 (3) (2) (a) of Ordinance No. 55 of 1943.”

At the conclusion of the trial the learned Magistrate acquitted the appellant of the first charge and convicted him of the second and sentenced him to pay a fine of Rs. 75. This appeal is from that conviction and sentence.

Section 3 (3) of the Betting on Horse-Racing Ordinance, as amended by section 3 (2) of the Betting on Horse-Racing (Amendment) Ordinance, No. 55 of 1943 (hereinafter referred to as the Ordinance) reads :

“(3) Any person who—

- (a) makes or places a bet on a horse-race other than a taxable bet, or
- (b) receives or negotiates a bet on a horse-race other than a taxable bet

shall be deemed to bet unlawfully on a horse-race and shall be guilty of an offence.”

The allegation in the charge is that in breach of the above-quoted sub-section the accused did “ have in his possession instruments of unlawful betting ” described in the charge. That section does not penalise the acts alleged in the second charge. Mere possession of instruments of unlawful betting is not a breach of section 3 (3) of the Ordinance. The accused has therefore been wrongly convicted and his conviction cannot stand.

The learned Magistrate does not appear to have given sufficient attention to the words of paragraph (b) of section 17 of the Ordinance. That section reads :

“ 17. Any person who is found—

- (a) in any premises kept or used for the purpose of unlawful betting on a horse-race ; or
- (b) in possession of any instrument of unlawful betting on the occasion of his being searched under this Ordinance,

shall be presumed, until the contrary is proved, to be guilty of the offence of unlawful betting on a horse-race.”

The possession of any instrument of unlawful betting is an offence under section 17 (b) and not under section 3 (3). But mere possession of “ betting slips ” is not an offence even under section 17. To come within the ambit of that section the accused must be found in possession of an instrument of unlawful betting on the occasion of his being searched under the Ordinance. Unlawful betting, with its grammatical variations and cognate expressions, when used in relation to a horse-race means making, placing, receiving or negotiating a bet on a horse-race other than a taxable bet¹. Section 15 provides for the search of premises where there is reason to suspect that any offence against this Ordinance or any regulation made thereunder is being or has been committed, or when there is any document or thing directly or indirectly connected with any such offence. A search may be carried out under the authority of a search warrant granted by a Magistrate. In any case where a search warrant cannot be obtained from a Magistrate without affording the offender an opportunity of escape or of concealing evidence of the offence, a police officer of or above the rank of sergeant in charge of a police station may, after recording the grounds of his suspicion, search any premises.

In the instant case there is no evidence that the search was under section 15. The presumption created by section 17 does not therefore arise in regard to the possession of the betting slips in question. As I have indicated earlier, a person found in possession of instruments of unlawful betting is not guilty of an offence unless it can be proved that he falls within the ambit of section 17. Once it is established that he is a person to whom that section applies, he is presumed to be guilty of the offence of unlawful betting until he proves the contrary.

The appeal is allowed and the conviction is set aside.

Appeal allowed.

¹ Section 2, *Betting on Horse-Racing Ordinance.*