

1914.

Present: Pereira J.

KRISNARATNA *v.* SIYAN APPU *et al.*

395—P. C. Galle, 6,252.

Unlawful gaming—Exclusive jurisdiction of Police Court—Arrest by police officer—Escape from custody—Jurisdiction of Police Court to offence under s. 219, Penal Code.

The Gaming Ordinance, 1889, gives police officers the power "to arrest and to take before the Police Court" any persons found committing the offence of unlawful gaming.

Held, that a police officer has the power to arrest a person found committing unlawful gaming, although the offence is being committed at a place within the jurisdiction of a Gansabhawa and the Police Court has therefore no jurisdiction to try the offender.

Under the Criminal Procedure Code, Police Courts have jurisdiction to try the offence of escape from legal custody only when the detention of the person who has so escaped was in respect of an offence cognizable by a Police Court.

Held, that a Police Court may try such offence when the detention of the person who has escaped was in respect of an offence cognizable by an inferior Court.

THE facts appear from the judgment. This was an appeal by the Attorney-General from an acquittal.

van Langenberg, K.C., S.-G., for the appellant.—The accused were arrested by the police officer in the act of unlawful gaming. Section 6 of Ordinance No. 17 of 1889 authorizes police officers to arrest and take before the Police Court having jurisdiction any

person found committing the offence of unlawful gaming. The fact that the persons arrested were subject to the exclusive jurisdiction of the Gansabhawa does not take away from the police officer the power to arrest. The accused were in the lawful custody of the police officer when they escaped.

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The Police Court has jurisdiction to try the offence of escape. The object of the schedule to the Criminal Procedure Code was merely to provide that a Police Court should not try the offence of escape when the offence for which the accused was arrested was beyond the jurisdiction of the Police Court. The jurisdiction of the Police Court to try this case is not ousted by the fact that a Gansabhawa has been given jurisdiction in this area in cases of unlawful gaming.

J. S. Jayewardene, for the accused, respondents.—The provisions of the Gaming Ordinance of 1889 have no application in places which have been brought within the operation of the Village Communities Ordinance, No. 24 of 1889, and in which the inhabitants have, under the provisions of section 6 (12) of Ordinance No. 24 of 1889, made rules for the prevention of gambling and cockfighting. In such cases the Village Committees have exclusive jurisdiction (*Jansz v. Perera* ¹). In this case the Police Court had no jurisdiction. There was no Police Court before which the person arrested could have been taken. The police officer did not have any power to arrest the accused under section 6 of the Gaming Ordinance. The arrest was illegal, and the escape was not an offence.

The schedule to the Criminal Procedure Code gives the Police Court jurisdiction to try offences under section 219 of the Penal Code, when the detention of the person who had so escaped was in respect of an offence triable by a Police Court. The Police Court had no jurisdiction to try the accused for unlawful gaming. The Police Court has, therefore, no jurisdiction to try this case.

Cur. adv. vult.

May 25, 1914. PEREIRA J.—

This is an appeal from an acquittal. The accused were charged with escape from the custody of the Sub-Inspector of Police of Dodanduwa, in which they were lawfully detained for an offence, and with having thus committed an offence punishable under section 219 of the Penal Code. The accused were found in the act of committing the offence of unlawful gaming and arrested by the Sub-Inspector. This I assume only for the purposes of the present argument. The first question is, whether the accused were in the lawful custody of the Police Inspector. Section 6 of the Gaming Ordinance, 1889, gives police officers the power to arrest and to take before the Police Court having jurisdiction any person found

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committing the offence of unlawful gaming. In the present instance the persons arrested were not subject to the jurisdiction of the Police Court, but were subject to the jurisdiction of the Gansabhawa, and it is argued that because the persons arrested were not liable to be taken before the Police Court they could not be arrested at all. I do not think that the fact that a police officer making an arrest in the circumstances mentioned above is not able to take the person arrested before a Police Court in any way affects the power conferred on him to make the arrest, provided there is a Court before which the accused might promptly be taken. The object of the provision to take the person arrested before the Police Court is no more than to prevent his undue detention, after arrest, in the custody of the person arresting. So long as there was the Gansabhawa before which the arrested persons in the present instance could legitimately have been taken, I think that the arrest was justified under section 6 of the Ordinance.

The next question is whether, when the Police Court had no jurisdiction to try the accused for the offence for which they had been arrested, it had jurisdiction to try them for the offence of escape from legal custody. The schedule to the Criminal Procedure Code gives the Police Court jurisdiction to try the offence of escape from legal custody only when the detention of the person who had so escaped was in respect of an offence cognizable by a Police Court. The object of this provision clearly is to deprive the Police Court of jurisdiction when the detention was in respect of an offence within the jurisdiction of only a higher Court; but the greater includes the less, and if the Police Court had jurisdiction when the detention was in respect of an offence cognizable by itself *a fortiori*, would it have jurisdiction when such offence was cognizable by a Court of lesser jurisdiction. Otherwise there would be the anomaly of the Police Court having jurisdiction to try one offence, while an offence of manifestly less magnitude would have to be tried by a higher Court.

I set aside the order appealed from, and remit the case to the Police Court to be proceeded with in due course.

Set aside.