

Janardhan vs State Of Maharashtra on 4 April, 1978

Equivalent citations: AIR1978SC1234, (1978)2SCC465, [1978]3SCR586

Bench: P.N. Shinghal, S. Murtaza Fazal Ali

JUDGMENT

1. This appeal by certificate granted by the Bombay High Court raises an interesting question.
2. The appellant along with others was convicted Under Section 4 of the Gambling Act and
3. The facts of the case are not in dispute and counsel for the appellant has not raised
4. One of the important points of law which was urged before the High Court as also before
5. Thus, the entire case turns upon the validity of the search warrant issued by the Assistant
6. Learned counsel for the appellant however submitted that the view taken by the High Court
- It shall be lawful for the Commissioner of Police in the City of Bombay, and elsewhere
7. It would be seen from a perusal of Section 6 of the Gambling Act that as the term 'Commissioner' is defined in
- 17(1) In any Bombay Act made after the commencement of this Act it shall be sufficient
8. Analysing this definition it would appear that any official title of the officer mentioned
9. Furthermore, not only the official title but even the functions executed by the said officer
2. In this Act, unless there is anything repugnant in the subject or context :

* * *

(6) ...A Commissioner of Police including an Additional Commissioner of Police, A Deputy Commissioner of Police

Section 11 of the Police Act runs thus :

11(1) The State Government may appoint for any area for which a Commissioner of Police has been appointed

(2) An assistant Commissioner appointed under Sub-section (1) shall exercise such powers

A perusal of Section 11 of the Police Act leads to the inescapable conclusion that an A
10(2) Every such Deputy Commissioner shall, under the orders of the Commissioner, exerc

10. The High Court has found as a fact that there was a notification by the State Govern

11. Learned counsel for the appellant however submitted that the power of assignment of

12. I am, therefore, satisfied that the conviction of the appellant does not suffer from

Shinghal, J.

13. While I agree with the conclusion arrived at by my brother Fazal Ali, I would like to state my reasons for the same.

14. This appeal by a certificate of the Bombay High Court is directed against its judgment dated November 8, 1971, by which it dismissed the petition for revising the appellate judgment of the Additional Sessions Judge of Nagpur upholding the conviction of the revision petitioner. The trial court convicted appellant Janardhan of an offence Under Section 4 of the Bombay Prevention of Gambling Act, 1887, hereinafter referred to as the Act, and sentenced him to rigorous imprisonment for two months and a fine of Rs. 400/-, or in default of payment of fine to undergo further rigorous imprisonment for one month. The remaining accused (except accused No. 15) were convicted of an offence Under Section 5 of the Act, and were sentenced to rigorous imprisonment for 7 days and a fine of Rs. 50/- each. This appeal relates to appellant Janardhan.

15. It was alleged against the appellant that he was keeping a common gaming house in a hut in Nagpur which was in his occupation. The Assistant Commissioner of Police issued a special warrant of entry and search Under Section 6 of the Act on December 25, 1967, which was valid up to December 31, 1967, empowering the Police Inspector to enter and search the appellant's hut as it was suspected to be used as common gaming house. This was done by the Police Inspector on December 27, 1967, when he found that the other accused were indulging in gaming and the appellant was accepting the hand. They were accordingly apprehended and were challenged and convicted as aforesaid.

16. It has been argued before us that the special warrant Under Section 6 of the Act, referred to above, could be issued only by the Commissioner of Police, and not by the Assistant Commissioner of Police, so that the warrant under which the entry and the search were made in the appellant's hut was unauthorised and invalid and that the High Court erred in taking a contrary view.

17. Section 6(1)(i) of the Act with which we are concerned in this case provides for entry and search in gaming houses, inter alia, by the following Police Officers,-

6(1)(i) in any area for which a Commissioner of Police has been appointed not below the rank of a Sub-Inspector and either empowered by general order in writing or authorised in each case by special warrant issued by the Commissioner of Police,....

The expression "Commissioner of Police" has however not been defined in the Act.

18. The Bombay General Clauses Act, 1904, does not also define the expression "Commissioner of Police." Section 17 of that Act appears under the rubric "Powers and Functionaries" and reads as follows,-

17. (1) In any Bombay Act or Maharashtra Act made after the commencement of this Act it shall be sufficient for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

19. Sub-section (2) of the section specifically provides that the section applies also to all Bombay Acts made before the commencement of the Bombay General Clauses Act, 1904. It would therefore follow that Section 17(1) is applicable to the present controversy. Under Sub-section (1) of Section 17 it was therefore sufficient for the purpose of indicating the application of a law to every person "for the time being executing the functions of an office" to mention the official title of the officer "at present executing the functions". Accordingly it was sufficient to mention the "Commissioner of Police" by his official title for purposes of Section 6 of the Act as he was the functionary who was executing the functions referred to in the section at the time when the Act came into force. As Section 17 of the Bombay General Clauses Act deals with the substitution of functionaries, it enabled that functionary to discharge the functions of the Commissioner of Police Under Section 6(1) of the Act who was "for the time being executing the functions" of that office. In other words, as it was the Commissioner of Police who had the authority to issue the special warrant Under Section 6(1) of the Act when it came into force, it would be permissible for the Assistant Commissioner of Police to be substituted for that functionary if it could be shown that it was he who was executing the functions of the Commissioner of Police on the date of issue of the special warrant referred to above i.e. on December 25, 1967.

20. It remains for consideration whether the Assistant Commissioner of Police could be said to be executing the functions of the Commissioner of Police Under Section 6(1) of the Act at the time when he issued the special warrant. Reference in this connection may be made to Section 11(2) of the Bombay Police Act, 1951, which provides as follows,-

11(2). An Assistant Commissioner appointed under Sub-section (1)(shall exercise such powers and perform such duties and functions as can be exercised or performed under the provisions of this Act or any other law for the time being in force or as are assigned to him by the Commissioner under the

General or Special orders of the State Government.

21. It was therefore permissible for the Assistant Commissioner of Police not only to exercise such powers and perform such duties and functions as he could, in terms, exercise or perform under the provisions of the Bombay Police Act, or any other law for the time being in force, but also the duties and functions assigned to him by the Commissioner of Police under the general or special orders of the State Government. The High Court has taken note in this connection of the State Government Order No. APO-2463-C-2896-(III)-(E)-V, dated March 10, 1967, which empowered all Commissioners of Police to assign to the Assistant Commissioners of Police working under them any of their powers, duties and functions not only under the provisions of the Bombay Police Act, 1951, but also under any other law for the time being in force. The existence of such an order has not in fact been challenged before us. The Assistant Commissioner of Police was therefore the functionary who could, by virtue of Section 17 of the Bombay General Clauses Act, discharge the functions of the Commissioner of Police Under Section 6(1) of the Act in the matter of issuing a special warrant like the one issued in the present case. It is also not disputed that the Commissioner of Police issued Order No. 2036 dated September 19, 1967, authorising all Assistant Commissioners of Police working under him to issue search warrants Under Section 6 of the Act to any Police Officer working under them not below the rank of a Sub-Inspector of Police. As has been shown, this was legally permissible, and it is futile to contend that the High Court erred in rejecting the appellant's contention to the contrary.

22. It however appears that in a matter like this, when a period of more than 7 years has gone by since the appellant's conviction, it would not be necessary to send him back to prison. While therefore the appellant's conviction is upheld, the sentence is reduced to the imprisonment already undergone by him without, however, making any change in the sentence of fine and the imprisonment which has been ordered in default of its payment. With this modification the appeal fails and is dismissed.