Supreme Court of India
State Of Gujarat And Anr. vs Lalsingh Kishansingh on 12 August, 1980
Equivalent citations: AIR 1981 SC 368, 1980 CriLJ 1413, (1981) 0 GLR 450, (1981) 2 SCC 75, 1981 1 SCR 391
Author: Sarkaria
Bench: R Pathak, R Sarkaria
JUDGMENT Sarkaria, J.

1. This appeal by special leave is directed against a judgment, dated November 15/16, 1973, of the High Court of Gujarat. The material facts are as under :

2. On June 23, 1973, a Police Sub-Inspector made a report to the District Superintendent of Police, Rajkot, to the effect that the premises known as Rajkot Yuvak Sahakar Mandal situated at Mochhi Bazar Road, near Krishna Cinema, Rajkot was used as a common gaming house and gambling was going on therein. The Deputy Superintendent of Police, after making an inquiry, was satisfied about the contents of the report and he issued a warrant under Section 6 of the Bombay Prevention of Gambling Act (hereinafter referred to as the Act) and sent it to the Police Sub-Inspector, Rajkot, for execution in accordance with law. The Sub-Inspector then reached the aforesaid premises in the early hours of June 24, 1973 at 4 a.m. He found 10 persons, including the respondent herein, in the premises. They had all gathered there for the purpose of gambling, and gambling was actually going on by play of cards, and tokens of various designs, which were used to indicate the different points, were also found there. All the ten persons were arrested in respect of offences under Sections 4 and 5 of the Act. The instruments of gaming were also seized.

3. On the following morning at 7 a.m., the petitioner and his companions submitted an application to the Police Sub-Inspector, who was the first respondent before the High Court, requesting him to enlarge them on bail. The Sub-Inspector did not consider their bail applications, nor did he pass any order thereon. At about noon, however, the respondents were produced before the Magistrate, who released them on bail. The Sub-Inspector did not consider their bail applications and release them on bail because he was prohibited from doing so by a Circular Order issued by Shri P.H. Jethwa, District Superintendent of Police, Rajkot, directing all the Police Sub-Inspectors not to release persons arrested in respect of offences under Sections 4 and 5 of the Act on bail, because in the Form of the warrant prescribed under Section 6 of the Act, it is mentioned that the arrested persons should be produced before the Magistrate. The Circular Order further directed that the arrested persons under the Act should be produced before the Magistrate. The Circular further warned that if any Police Officer violated these directions, he would expose himself to disciplinary action. This Circular Order (Ex. B) was impugned by a writ petition under Article 226 of the Constitution before the High Court.

4. Two main contentions were raised before the High Court. First, that offences under Sections 4 and 5 of the Act are cognizable and bailable. Consequently, under Section 496 of the CrPC, 1898, the Police Officer arresting the respondents was duty-bound to enlarge them on bail. The impugned Circular, being contrary to the statutory provisions, is illegal and ultra vires. Second, the impugned Circular is violative of Article 14 of the Constitution, inasmuch as it discriminates between persons

similarly situated. The second ground was not pressed before the High Court.

5. The first contention prevailed with the High Court. In conclusion, it held that the Police Officer had the power or the authority to enlarge the arrested persons on bail. Its reason was as under :

When the legislature empowers an officer to delegate any authority to do certain acts to another it necessarily implies that the original authority can do such acts itself. Consequently, when the Commissioner of Police and certain other officers mentioned in Section 6 are authorised to issue special warrant for search of the premises where gambling is going on, for the seizure of the articles therein or take into custody and bring before the court such persons who may be found therein, such officers can themselves do such acts.

Referring to Section 4(1)(f) of the CrPC the High Court observed that the words "a police officer" in that provision which defines a cognizable offence, do not mean "each and every" police officer. It is sufficient if the power to' arrest without warrant is limited by the provisions of law to a class of police officers and the offences in such cases fall within the purview of Clause (f) of Sub-section (1) of Section 4 of the Code. Since under Section 6 of the Act, the Police Commissioner and certain other officers, mentioned therein, have the power and authority to arrest persons accused of having committed the offences under Sections 4 and 5 of the Act without warrant the said offences are cognizable.

6. Support for this reasoning was sought from a decision of this Court in Union of India v. I.C. Lala, etc. . The High Court further held that the provisions of Section 6 merely provide a limited exemption from the provisions of the CrPC, in so far as they limit the class of Police Officers who are competent to investigate the offences and to arrest without a warrant. The mere fact that certain restrictions are placed as to the Police Officers who are competent to investigate the offence would not make the offence any the less than cognizable. It, also, referred to several decisions of the Bombay High Court, including the one Emperor v. Raghunath 34 Bom. L.R. 901 decided by a Division Bench consisting of Beaumont, C.J. and Broomfield, J., wherein it was held that an offence under Section 4 of the Act is non-cognizable. The High Court did not follow this decision because, in its view, it had ignored an earlier decision which covered the point which the court had decided, and the earlier decision was contrary to it. With this reasoning, the High Court came to the conclusion that offences under Sections 4 and 5, being cognizable and bailable, the Commissioner of Police and the officers to whom a warrant can be granted for the purpose of investigation under the Act, have to release accused on bail under the provisions of Section 496 of the CrPC. They derive their power to grant bail from the statute. The impugned order therefore, cannot be sustained because it runs counter to the statutory provisions which authorise the police officers mentioned in Section 6 to grant bail.

7. Nobody has appeared on behalf of the respondent, despite notice, to oppose this appeal. Shri H.S. Marwah, however, has been kind enough to assist the Court as Amicus Curiae on behalf of the respondents.

8. Since the case was decided by the High Court on the basis of the first contention in favour of the respondent, herein, and the High Court did not go into the constitutional validity of the impugned order, we will confine the discussion to the first point, on the basis of which, the High Court has invalidated the impugned order.

9. We will assume for our purpose that Section 6 of the Act does not offend Article 14 of the Constitution. Section 6 runs as under :

6(1). It shall be lawful for a Police Officer-

(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 a general order in writing or authorised in each case by special warrant issued by the Commissioner of Police; and

(ii) elsewhere not below the rank of Sub-Inspector of Police authorised by special warrant issued in each case by a District Magistrate or Sub-Divisional Magistrate or by a Taluka Magistrate specially empowered by the State Government in this behalf or by a District Additional, Assistant or Deputy Superintendent of Police, and

(iii) without prejudice to the provision in Clause (ii) above, in such other area as the State Government may, by notification in the Official Gazette specify in this behalf, not below the rank of a Sub-Inspector and empowered by general order in writing issued by the District Magistrate.

(a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any house, room or place which he has reason to suspect is used as a common gaming house :

(b) to search all parts of the house, room or place which he shall have so entered, when he shall have reason to suspect that any instruments of gaming are concealed therein, and also the persons whom he shall find therein whether such persons are then actually gaming or not;

(c) to take into custody and bring before a Magistrate all such persons;

(d) to seize all things which are reasonably suspected to have been used or intended to be used for the purpose of gaming, and which are found therein :

Provided that no officer shall be authorised by special warrant unless the Commissioner of Police, the Magistrate, the District or Additional or Assistant or Deputy Superintendent of Police concerned is satisfied, upon making such inquiry as he may think necessary, that there are good grounds to suspect the said house, room or place to be used as a common gaming house.

10. From a plain reading of Section 6(1), it is clear that subject to the conditions of the proviso, a Commissioner of Police may empower by a general order or authorise by special warrant a police officer not below the rank of a sub-Inspector, to do any of the acts and things enumerated in

Sub-clauses (a) to (d) of that sub-section, including the act of arresting a person found gambling or present in a common gaming house. It follows therefrom, by necessary implication, that the Commissioner of Police can personally do any of the aforesaid acts and things which he could authorise any other police officer of the requisite rank to do. The primary repository of the plenary power to do the aforesaid acts and things, constituted under Sub-clause (i), is the Commissioner of Police. The sub-clause only enables him to employ his subordinate police officer(s), not below the authorised rank of a Sub-Inspector to execute his general order or special warrant to arrest for offences under Sections 4 and 5 of the Act.

11. It will be noted further that even under Sub-clause (iii), in an area notified by the Government, any police officer not below the rank of a Sub-Inspector empowered by the District Magistrate under a general order in writing can arrest a person found gambling or present in a common gaming house, without a warrant from a Magistrate. In short, Section 6 confers the power of arrest thereunder only on a specified class of police officers and not on any or every police officer.

12. It is in the light of the above analysis of Section 6(1) that we have to determine whether the offences under Sections 4 and 5 of the Act are 'cognizable offences'. Section 4(1)(f) of that CrPC, 1898, defines "cognizable offence" to mean an offence for, and 'cognizable case' to mean a case "in which a police officer, within or without the Presidency towns may, in accordance with the Second Schedule or under other law for the time being in force, arrest without warrant".

13. There was a divergence of judicial opinion in regard to the connotation of the words "a police officer" used in the above definition. One line of decisions, led by Deodhar Singh case I.L.R. 27 Cal. 144, 150, took the view that these words in Section 4(1)(f) do not necessarily mean "any and every" police officer. It is sufficient to bring an offence within the definition of a 'cognizable offence' if the power to arrest without a warrant is vested under the law in a police officer of a particular class only. The ratio of Deodhar Singh's case was followed by the Bombay High Court in Emperor v. Ismail and Emperor v. Abasbhai Abdul Hussain by the Nagpur Court in Nagarmal Jankiram A.I.R. 1941 Nag. 338, and by the Delhi High Court in Delhi Administration v. Parkash Chand and Ors. .

14. A contrary view was taken by the Assam High Court in G.K. Apu v. Union of India A.I.R. 1970 Assam 43; by the Allahabad High Court in State of U.P. v. Lal Bahadur and Ors. , 57; by the Madhya Bharat High Court in Union of India v. Mahesh Chandra ; and in some other decisions.

15. This conflict appears to have been set at rest by the decision of this Court in I.C. Lala's case (ibid) which has expressly overruled the view taken by the Assam and Madhya Bharat High Courts. We will notice Lala's case, later. It will suffice to say here that the view which has received the imprimatur of this Court, is that the expression "police officer" in Section 4(1)(f) of the Code does not necessarily mean "any and every" police officer, and an offence will still be a "cognizable offence" within this definition even if the power to arrest without warrant, for that offence is given by the statute to police officers of a particular rank or class, only.

16. In Queen Empress v. Deodhar Singh, I.L.R. 27 Cal. 144, 150 under the Bengal Public Gaming Act II of 1867, the District Superintendent of Police (or the District Magistrate) was competent to arrest

or by warrant to direct the arrest of persons found in a common gaming house. The Question was whether the offence under Section 4(1)(f) of the Bengal Act was cognizable. This question turned on an interpretation of the expression "police officer" in the definition of 'cognizable offence', and was answered in the affirmative, thus :

Now, under the Gambling Act, it is not every Police Officer who can arrest without a warrant. It is only the District Superintendent of Police who can arrest or by warrant direct, the arrest of persons gambling in a house. The District Superintendent being a Police Officer who may, under a law for the time being in force, viz., the Gambling Act, arrest without warrant. We think that the requirements of Clause (1)(f) of the above Sections are satisfied, and that the offence in question is, therefore, a 'cognizable offence'. We cannot accept the contention that the words in that clause, 'a Police Officer' mean 'any and every' Police Officer. It is sufficient if the Legislature has limited the power of arrest to any particular class of Police Officers.

17. If we may say so with respect, this is a correct exposition of the law on the point. The ratio of Deodhar Singh's case was followed by a Division Bench of the Bombay High Court (Marten and Madgavkar, JJ.) in Emperor v. Abasbhai Abdul Hussain (ibid). The impugned judgment before us is also based on this decision. These very provisions of the Bombay Prevention of Gambling Act came up for interpretation in re. Naganmal Jankiram (ibid), and the same view was taken by Pollock J.

18. In Abasbhai's case (ibid), a Sub-Inspector got a warrant issued under Section 6 of the Bombay Prevention of Gambling Act, which authorised him to search certain premises. In execution of that warrant the Sub-Inspector raided a house and arrested three persons who were found therein. The case was tried by the Magistrate concerned as a cognizable one. At the trial at the stage of arguments, it was contended on behalf of the accused that offences under Sections 4 and 5 were non-cognizable, and since the procedure of warrant case had been followed by the Magistrate, the trial was illegal. The trial court accepted the argument and acquitted the accused. In appeal before the High Court, it was agitated that the offence was a cognizable one. The High Court reasoned-and we think rightly-that since under Section 6 of the Act the Commissioner of Police has power to issue special warrants of search and also to arrest, he is competent to do personally, what he may authorise others to do by special warrant. It followed the dictum of Deodhar Singh's case, in regard to the interpretation of the words "a police officer" in the" definition of "cognizable offence" given in the CrPC. On these premises, the High Court held that offences under Sections 4 and 5 are cognizable.

19. In Emperor v. Ismail (ibid), a Division Bench of the Bombay High Court, reaffirmed the dictum of Abasbhai's case, that an offence punishable under Section 4 of the Act, is cognizable.

20. In Delhi Administration v. Parkash Chand and Ors., H.R. Khanna, J., following the dictum of the Calcutta High Court in Deodhar Singh's case, and of Bombay High Court in Abasbhai's case, held that offences under Sections 3 and 4 of Delhi Gambling Act are 'cognizable offences' as Section 5 of the Delhi Act gives the Superintendent of Police power to arrest or authorise any officer of police, not below the rank of Sub-Inspector, to arrest without a warrant.

21. It is argued on behalf of the appellant-State that the ratio of the aforesaid decisions in Deodhar Singh's case and Parkash Chand's case is not applicable to offences under the Bombay Prevention of Gambling Act, because the Bengal Act and the Delhi Act expressly empower the Superintendent of Police either to arrest himself or direct arrest by another police officer of requisite rank; whereas in Section 6(1) of the Bombay Prevention of Gambling Act there are no express words giving an option, to the Commissioner of Police to effect arrest, personally.

22. We are unable to accept this argument. The difference pointed out, is a distinction without a difference. What was explicit in the Bengal Gambling Act and the Delhi Gambling Act, is implicit in Section 6(1) of the Bombay Prevention of Gambling Act.

23. It will now be appropriate to notice this Court's decision in Union of India v. I.C. Lala. In that case, two army officers and one business-man were charged with the conspiracy of the offences punishable under Sections 120B and 420 of the Indian Penal Code, read with Section 5(2) of the Prevention of Corruption Act. The Officer who investigated these offences was an Inspector of the Delhi Police Establishment. Under Section 5A of the Prevention of Corruption Act, before its amendment in 1974, no officer below the rank of Deputy Superintendent of Police could investigate an offence punishable under Sections 161, 165 and 165A of the Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act, without the order of the Presidency Magistrate or a Magistrate of the First Class. The question before the Court was, whether sanction under Section 196A of the Code was necessary. The answer to this question turned upon whether an offence under Section 5(2) of the Prevention of Corruption Act was non-cognizable or cognizable. The High Court held that an offence under Section 5(2) of that Act was non-cognizable because it was not an offence for which any police officer could arrest without a warrant. The same argument which was canvassed before the High Court was repeated before this Court. And it was contended that the words 'a police officer' in Section 4(1)(f) of the Code mean 'any' police officer. This argument was repelled' by this Court and it was held that such an approach could not be a criterion for deciding whether the offence is cognizable or non-cognizable. It was observed :

If we pursue the same line of argument and look at the definition of non-cognizable offence in Section 4(1)(n) which defines non-cognizable offence as an offence for which a police officer, within or without a Presidency town, may not arrest without warrant, it might mean that as these are cases where a police officer of the rank of Dy. Superintendent and above can arrest without warrant these are not non-cognizable offences either How can there be a case which is neither cognizable nor non-cognizable? It was sought to be argued that these offences would be cognizable offences when they are investigated by the Deputy Superintendents of Police and superior officers and non-cognizable when they are investigated by officers below the rank of Deputy Superintendents. We fail to see how an offence would be cognizable in certain circumstances and non-cognizable in certain other circumstances.... We do not consider that this is a reasonable interpretation to place.

24. Once we hold that a Commissioner of Police who is competent to direct by issuing special warrant or general order, under Section 6(1)(i), another police officer of the requisite rank to arrest persons found gambling or present in a gaming house, can also arrest personally the offender concerned, the principle enunciated by this Court in Lala's case is immediately attracted in full force

and there is no escape from the conclusion that offences under Sections 4 and 5 of the Bombay Prevention of Gambling Act are cognizable. Such offences are admittedly bailable. It follows as a necessary corollary therefrom, that the commissioner of Police or the police officer who is authorised by him to search, arrest and investigate such offences, is under a legal obligation to release the accused on bail under the provisions of Section 496 of the Code. The authority to grant bail to the person arrested in execution of such a warrant, is derived by the officer arresting, from the statute and consequently, no executive instructions or administrative rules can abridge, or run counter to the statutory provisions of the Code. Since the impugned order or executive instructions are contrary to or inconsistent with the provisions of the Code and on a true construction, there is nothing in Section 6 or any other provision of the Act which takes away the right and power conferred by the Code on the police officer to grant bail to the person arrested by him for offences under Sections 4 and 5 of the Act, the impugned order was ultra vires and bad in law and had been rightly quashed by the High Court.

25. In the result, the appeal fails and is dismissed.