

REVISIONAL CRIMINAL.

Before Mr. Justice Wallach.

EMPEROR v. NANDU AND OTHERS.*

1919
August, 8.

Criminal Procedure Code, section 188, Proviso—Certificate of Political Agent not obtained—Agreement between Darbar of Native State and the neighbouring authorities in British India not a substitute therefor.

The existence of an agreement between the Darbar of a Native State and the authorities of the neighbouring portion of British India to render mutual assistance in the arrest of persons found gambling in either territory will not do away with the necessity of obtaining the certificate of the Political Agent or the Local Government, where such certificate is required by section 188, of the Code of Criminal Procedure.

CERTAIN persons were arrested in British territory, and charged with, tried for, and convicted of, offences under the Gambling Act, 1867, section 13. The said offences were alleged to have been committed in Kamptee, which is a Native State. The accused raised two defences—first, that gambling was not an offence in the state of Kamptee and, secondly, that no certificate as required by section 188 of the Code of Criminal Procedure had been obtained. The trying magistrate, however, overruled both these objections. His reasons for overruling the second objection are stated at length in the judgment of the Court. Against these convictions and sentences the accused applied in revision to the High Court.

Pandit *Braj Nath Vyas*, for the applicants.

The officiating Assistant Government Advocate. (*Babu Lalit Mohan Banerji*), for the Crown.

WALLACH, J. :—The applicants have been sentenced to a fine of Rs. 20 and in default to three weeks' rigorous imprisonment for offences under section 13 of Act III of 1867, alleged to have been committed in Kamptee, which is a Native State. Objection was taken at the hearing of the case that gambling was not shown to be an offence in the Native State in question, and, secondly, that the requirements of the proviso to section 188 of the Code of Criminal Procedure had not been satisfied. That proviso sets out that "when a native Indian subject of His Majesty commits an offence in the territories of any native Prince or Chief in

*Criminal Revision no. 406 of 1919, from an order of P. M. Kharegat, Magistrate, First Class, of Karwi, dated the 22nd of May, 1919.

1919

EMPEROR
v.
NANDU

India, he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found. Provided that no charge as to any such offence shall be inquired into in British India, unless the Political Agent, if there is one in the territory in which the offence is alleged to have been committed, certifies that in his opinion the charge ought to be inquired into in British India ; and, where there is no Political Agent, the sanction of the Local Government shall be required." The learned Magistrate has dealt in a light and airy fashion with these legal objections. Even if the applicants could be convicted of an offence of gambling in the Native State in question, they cannot be proceeded against in the absence of the certificate or the sanction set out in the proviso to section 188 of the Code of Criminal Procedure. The Magistrate who tried the case says :—" A few months ago under the instructions of the Political Agent a committee was constituted of some members of the Native State concerned and some members of the executive authorities in British India, and it was mutually agreed for convenience that British Indian police might arrest persons found gambling in the Native State and try them in British India, if they were British Indian subjects, and send them to the Native States, if they were subjects thereof, and *vice versa*, the Native State police could arrest persons found gambling in British India." An agreement like this cannot take the place of the certificate or sanction which is contemplated by the section aforesaid. Where there is a bar to the prosecution of a person unless certain formalities are carried out, those formalities have to be strictly carried out. I hold, therefore, that there was no jurisdiction to try the applicants at Banda, and I, therefore, set aside the conviction and sentence and direct that the fines, if paid, be refunded.

Conviction set aside.