

REVISIONAL CRIMINAL

*Before Mr. Justice Niamat-ullah*EMPEROR *v.* PURANMASHI*

1935

November, 25

Indian Penal Code, sections 268, 290—Public nuisance—Platforms built on road in front of shops—Lessees of shops sitting on the platforms for selling goods—Whether guilty of the offence.

The owners of the houses or shops abutting on a public road had built platforms in front of them, and the lessees of the shops used to sit on the platforms for selling their goods: *Held*, that if the platforms were encroachments on the public road the persons who had built them could be convicted of public nuisance under section 268 of the Indian Penal Code, but not the lessees who had merely rented the shops and sat on the platforms. If the existence of the platforms was a public nuisance, it would be so whether any one sat on them or not.

Section 290 of the Indian Penal Code had no application to the facts of the case.

Mr. Sri Narain Sahai, for the applicant.

The Assistant Government Advocate (*Dr. M. Wali-ullah*), for the Crown.

NIAMAT-ULLAH, J.:—These are three references made by the learned Sessions Judge, Azamgarh. The three applicants in revision are the lessees of certain houses or shops in Sardaha Bazar in the district of Azamgarh. The Bazar is on either side of the road. The owners of the houses or shops occupied by the applicants built certain platforms in front of them. It does not appear when these platforms were built for the first time. There can be no doubt that the object of these platforms was to enable the shopkeepers to sit on them for selling their goods. The platforms are alleged to be encroachments on the public road and therefore to amount to public nuisance within the meaning of section 268 of the Indian Penal Code. On the facts which do not appear to have been disputed section 290 has no application whatever. The act

*Criminal Reference No. 743 of 1935

made penal by that section is a public nuisance not otherwise punishable by the Indian Penal Code. Section 268 defines public nuisance as an act or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. Assuming that the platform caused any common injury, danger or annoyance to the public or to the people in general, the persons who built the platforms are guilty of the act which *ex hypothesi* amounts to a public nuisance. The applicants, who have merely rented the shops and sit on the platforms, cannot be considered to be doing any act amounting to a public nuisance. If the existence of the platforms is a public nuisance, it will be so, whether anyone sits on them or not. In my opinion, the applicants were not guilty of the offence with which they were charged. The applications are allowed. The conviction and the sentence of fine are set aside. The fines, if paid, shall be refunded.

1935

 EMPEROR
 v.
 PURAN-
 MASHI

APPELLATE CRIMINAL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

EMPEROR v. MATHURI AND OTHERS*

1935

Criminal Procedure Code, section 239(e)—Joinder of charges and of persons—Indian Penal Code, sections 457, 460—Whether they are offences “which include theft”—Joint trial of some persons for house-breaking by night with other persons for receiving property stolen thereby, is illegal—Criminal Procedure Code, section 537—Illegality curable if no failure of justice—Criminal Procedure Code, sections 235, 236, 237—Charge under one offence and conviction under another offence—Joinder of a separate charge against some of several persons who are jointly tried under a common charge.

 November, 26

*Criminal Appeal No. 266 of 1935, by the Local Government from an order of Ganga Prasad Varma, Sessions Judge of Farrukhabad, dated the 12th of January, 1935.