

in *Jhanda Singh v. Mt. Lachmi* (1), which my learned brother has followed. Under these circumstances I concur in the order passed by him and agree in dismissing the appeal with costs.

N. F. E.

1927

DUNI CHAND
v.
MOTA SINGH.

AGHA HAIDAR J.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tek Chand.

MUHAMMAD KHAN AND ANOTHER—Petitioners

1927

versus

THE CROWN—Respondent.

June 28.

Criminal Revision No. 377 of 1927.

Public Gambling Act, III of 1867, section 13—Public place—meaning of.

Held, that a public place within the meaning of section 13 of the Gambling Act is a place where the public actually and in fact go, without let or hindrance no matter whether they have a legal right to go or not.

Emperor v. Sukhnandan Singh (2), *Gajju v. Emperor* (3), and *The Queen v. Wellard* (4), followed.

Emperor v. Hussein Noor Mahomed (5), *Kanshi Ram v. The Empress* (6), and *Mul Singh v. The Empress* (7), distinguished.

Held also, that a person who offends against this section can be punished either with imprisonment or with fine but not with both.

Empress v. Gokal (8), followed.

Application for revision of the order of R. J. S. Dodd, Esquire, District Magistrate, Ferozepore, dated the 13th February 1927, affirming that of

(1) (1920) I. L. R. 1 Lah. 344. (5) (1906) I. L. R. 30 Bom. 348.

(2) (1922) I. L. R. 44 All. 265. (6) 17 P. R. (Cr.) 1882.

(3) (1918) 47 I. C. 493. (7) 11 P. R. (Cr.) 1890.

(4) (1884) L. R. 14 Q. B. D. 63. (8) 25 P. R. (Cr.) 1880.

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Sardar *Harmandar Singh*, Magistrate, 2nd class Ferozepore, dated the 12th February 1927, convicting the petitioners.

MUHAMMAD DIN JAN, for Petitioners.

R. C. SONI, for Government Advocate, for Respondent.

JUDGMENT.

TEK CHAND J.

TEK CHAND J.—The petitioners, Muhammad Khan and Ghulam Hassan, and seven other persons were convicted by the Magistrate 2nd class, Ferozepore, under section 13 of the Public Gambling Act, III of 1867. These two were sentenced each to undergo one month's rigorous imprisonment and to pay a fine of Rs. 10 and the others were sentenced to pay a fine of Rs. 25 each. Muhammad Khan and Ghulam Hassan appealed to the District Magistrate, Ferozepore, who affirmed the conviction and sentences against them. They have now come up in revision to this Court.

The first point urged on their behalf is that the place where they were found gambling is not a 'public place' within the meaning of section 13 of the Act. The finding of the learned District Magistrate is that the site concerned is in field No. 1500, which is the property of Government and is now vested in the Municipal Committee of Ferozepore. A portion of this field is enclosed within a low boundary wall and is used as a cremation ground for the Hindus. Outside this enclosure is a strip of land to which all classes of the public have free access. This strip is connected with the public road by a path leading through certain fields. The finding is "that the owners of the fields through which the path goes might have a right to stop people passing, but as a

matter of fact they never do so. It was on this strip of land just outside the cremation ground, that the petitioners and their companions were found gambling by the Inspector, who headed the raiding party. The District Magistrate found that this spot, besides "being in full view of the public as they pass to and fro across the fields, is also freely accessible to all classes of the public and belongs to a public body, which has never enclosed it." In my opinion, on these findings the learned District Magistrate came to a correct conclusion that the place in question was a 'public place' within the meaning of section 13 of the Gambling Act. It is clear that the public have as a fact free access to this place without obstruction either by the Municipality, which owns field No. 1500 or by the owners of the other fields through which the pathway from the public road leads to it.

It is well settled that in order to bring a particular spot within section 13, it is not necessary that the public should have a legal right to go to it. All that is necessary is that the public *actually* go there, whether as of right or on sufferance of the proprietors. In *Emperor versus Sukhnandan Singh* (1), it was held that in the area occupied by a large grove, which belonged to a private individual but to which the public were allowed free access on certain occasions, was a 'public place' within the meaning of the section. Similarly in *Gajju versus Emperor* (2), it was held that the words "public place" signify a place to which the public resort as a matter of fact, whether of right or with the permission of the private owner. The meaning of a similar expression appearing in 14 and 15 Vict. c. 100, s. 29 was consider-

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(1) (1922) I. L. R. 44 All. 265. (2) (1918) 47 I. C. 433.

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FIR CHAND J.

ed at length in *The Queen versus Wellard* (1), where Coleridge C.J. defined a 'public place' as a place where the public was in the habit of resorting and no one prevented them from so resorting to it. Grove J. remarked that a 'public place' was one where the public go, no matter whether they have a right to go or not. He said that "the right was not the question," but the determining factor was whether the public actually and in fact went there without let or hindrance. There are a number of reported cases of Indian Courts in which the same view has been taken, but I do not think it necessary to refer to all of them.

The learned counsel for the petitioners has referred me to three rulings, each of which seems to me to be distinguishable. In *Emperor versus Hussein Noor Mahomed* (2), the question was whether a railway carriage forming part of a special train running between Poona and Bombay was a 'public place' within the meaning of the Bombay Prevention of Gambling Act, the wording of which is similar to that of the Indian Public Gambling Act. It is obvious that there is no analogy between a railway carriage forming part of a special train and the spot in question in the present case. The next ruling cited is *Kanshi Ram versus The Empress* (3), where in a brief judgment it was held that gambling in a place near a public road and exposed to public view is not gambling in a 'public place'. No details are, however, given in the report as to the ownership and nature of the spot then in question. All that is stated is that the mere fact that the place was visible from the road was not enough to make it a 'public place' within the mean-

(1) (1884) L. R. 14 Q. B. D. 63. (2) (1906) I. L. R. 80 Bom. 348.

(3) 17 P. R. (Cr.) 1882.

ing of the section. In *Mul Singh* versus *The Empress* (1), a *thara* forming part of a private house situate by the side of, but outside, a public street was held not to be a 'public place'. The facts of these cases were materially different from the present case. For the foregoing reasons, I am of opinion, that the spot, where the petitioners were found gambling is a 'public place' and I affirm the conviction.

The petitioners have been sentenced to undergo rigorous imprisonment for one month *and* to pay a fine of Rs. 10 each. Section 13 provides, however, that a person found guilty under that section shall be liable to a fine not exceeding Rs. 50 or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month. It is obvious, that a person who offends against this section can be punished either with imprisonment or with fine but not with both. Double punishment of fine and imprisonment cannot be legally imposed. See *Empress* versus *Gokal* (2). The sentence imposed on the petitioners is consequently illegal. I, therefore, accept the petition for revision to this extent that I modify the sentence to one of rigorous imprisonment for the period already undergone. The sentence of fine is set aside. The fine, if paid, will be refunded.

A. N. C.

Revision accepted in part.

(1) 11 P. R. (Cr.) 1890.

(2) 25 P. R. (Cr.) 1880.

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