

Court meant to find as a fact that defendant No. 2 did take an active and effective part in the matter which resulted in the breach of the contract. Therefore I am unable to find from the judgment appealed against that those facts are established which would justify throwing any portion of the damages on defendant No. 2.

Therefore I agree to the order proposed.

Decree modified.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Beaman and Mr. Justice Heaton.

EMPEROR *v.* MAHOMED NATHU.*

*Bombay Prevention of Gambling Act (Bombay Act IV of 1887), section 12†—
Gambling in the court yard of a mosque—Sentence.*

The accused who were peons and mill-hands betook themselves on a hot afternoon to the cool shades of a musjid, where they amused themselves by playing cards for very insignificant stakes. They were convicted for an offence under section 12 of the Bombay Prevention of Gambling Act, 1887, and sentenced to undergo simple imprisonment for fifteen days:—

Held, that the sentence passed was, under the circumstances, out of proportion to the criminality of the acts charged; and that a sentence of small fine would have been adequate.

* Criminal Application for Revision No. 176 of 1916.

† The section runs as follows:—

12. A Police Officer may apprehend without warrant—(a) any person found playing for money or other valuable thing with cards, dice, counters, or other instruments of gaming used in playing any game, not being a game of mere skill, in any public street, place or thorough fare.

Any such person shall, on conviction, be punished with fine which may extend to fifty Rupees, or with imprisonment which may extend to one month.

1916.

JEKISONDAS
HARKISON-
DAS

v.

RANCHODDAS
BHAGVAN-
DAS.

1916.

September 7.

1916.

EMPEROR

v.

MAHOMED
NATHU.

THIS was an application in revision from the conviction and sentence passed by S. F. A. Edroos, City Magistrate of Ahmedabad.

The accused, who were municipal peons and mill-hands went one afternoon to the Daskroi mosque in Ahmedabad, which was reserved as a public ancient monument of architecture; and played at cards for insignificant stakes. The trying Magistrate convicted them under section 12 of the Bombay Prevention of Gambling Act, 1887, and sentenced them each to suffer simple imprisonment for fifteen days.

The accused applied to the High Court.

T. R. Desai, for the applicants:—Section 12 of the Bombay Prevention of Gambling Act, 1890, requires proof of the game played by the accused. Here, there is no such proof. The presumption under section 5 is not applicable: *Emperor v. Hiralal*.⁽¹⁾ The place where the accused were found playing is not a public place: see *Emperor v. Chennappa*;⁽²⁾ *Ghoddu v. The Empress*;⁽³⁾ *Emperor v. Hussein*⁽⁴⁾ and *Emperor v. Jusub Ally*.⁽⁵⁾ The sentence passed is excessive.

S. S. Patkar, Government Pleader, for the Crown:—It is found by the Magistrate that the accused were gambling and that the place was a public place: these are findings of fact.

PER CURIAM.—We think it a pity that the gambling laws, through the injudicious activity of the police and want of discretion on the part of the Magistracy, should sometimes be worked so harshly as they have been in this case. Without going into a discussion of the points raised by the learned counsel for the applicants

⁽¹⁾ (1913) 15 Bom. L. R. 331.

⁽³⁾ (1882) P. R. No. 13 of 1882 (Cr.).

⁽²⁾ (1912) 15 Bom. L. R. 101.

⁽⁴⁾ (1905) 30 Bom. 348.

⁽⁵⁾ (1905) 29 Bom. 386.

it will be sufficient to say that every feature of the case convinces us that it was of the most trifling character and one which might have been passed over by the police with a caution, or if brought before the Magistrate, dealt with by him in a very different way from that in which he has dealt with these offenders. They are peons and mill-hands, and on a hot afternoon betook themselves to the cool shades of the Daskroi Masjid where, adopting the Magistrate's finding of fact, they were amusing themselves by playing cards for very insignificant stakes. The police raided the place and dragged nine of these persons before the Magistrate who convicted five of them and actually sentenced them to fifteen days' imprisonment. Such a sentence in such circumstances appears to us to be monstrous and altogether out of proportion to the criminality of the acts charged. If the police had thought it worthwhile to bring such persons before a Magistrate on such charges, we should have thought that the Magistrate would have seen that this was no serious matter, and if he had felt it necessary upon the evidence to convict the accused persons at all, he would have let them go with a small fine. Unfortunately they appear to have undergone seven days' imprisonment before they were released on bail by this High Court.

We, therefore, now remit the unexpired portion of the sentence. We do not interfere with the conviction, because in the circumstances there is no occasion for us to do so.

Sentence reduced.

R. R.

1916,

EMPEROR

v.

MAHOMED
NATHU.