

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

CHHOTAN HASMAT ALI (ORIGINAL ACCUSED), PETITIONER v. EMPEROR.*

1935
January 16

Criminal Procedure Code (Act V of 1898), section 562 (1)—First offenders—Previous conviction under the Bombay Prevention of Gambling Act—Applicability of the section—Bombay Prevention of Gambling Act (Bombay Act IV of 1887), section 12.

Section 562 (1) of the Criminal Procedure Code, 1898, applies to a person convicted of an offence punishable with imprisonment of not more than a certain period and that sub-section, unlike sub-section (1A), which only applies in the case of convictions under particular sections of the Indian Penal Code, covers the case of a conviction under any law and is not limited to a conviction under the Indian Penal Code.

A conviction under the Bombay Prevention of Gambling Act, 1887, is a "previous conviction" within the meaning of section 562 (1) of the Criminal Procedure Code, 1898, and therefore the benefit of the provisions of that section cannot be given to an accused person who is subsequently convicted of an offence under the Indian Penal Code.

CRIMINAL REVISION APPLICATION against the order made by N. J. Sheikh, Sessions Judge at Surat, varying the order passed by D. A. Patel, First Class City Magistrate, Surat.

The accused was charged with the offence under section 457 of the Indian Penal Code for having committed lurking house trespass by entering the house of the complainant at night in order to commit theft. The accused was convicted of the offence under section 457 and in convicting the accused the Magistrate observed as follows :—

"The accused is about 24 years of age. He has one previous conviction on December 20, 1933, under section 12 of the Prevention of Gambling Act admitted by him. He is therefore not eligible for the concession given under section 562 (1) of the Criminal Procedure Code. Also he could not give any security. He is therefore sentenced to rigorous imprisonment for two months and to pay a fine of Rs. 25, in default to undergo rigorous imprisonment for two months."

On appeal the Sessions Judge confirmed the conviction and as to sentence he ordered that the accused be released on his furnishing a solvent surety for Rs. 100 and a personal

* Criminal Revision Application No. 444 of 1934.

recognisance of the like amount for a period of six months by giving him the benefit of section 562 (1) of the Criminal Procedure Code. His reasons were as follows:—

“The learned Magistrate refrained from giving the benefit of section 562 under the belief that the convictions under the local laws debarred criminals from getting advantage under section 562. In 1 Cr. L. J. 1061 it was decided that a conviction under the local law did not come under the purview of section 75, Indian Penal Code, and the provisions of that section cannot be applied with reference to such a conviction. On the analogy of this ruling I hold that the conviction under the Gaming Act should not be considered and the appellant be given the benefit of section 562 (1), Criminal Procedure Code.”

The Government of Bombay applied to the High Court.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Crown.

R. B. Kantawala, for the accused.

BEAUMONT C. J. This is a revision application by the Government of Bombay which raises a short point of law. The accused, who is a man of twenty-four years of age, was convicted by the First Class Magistrate of Surat under section 457 of the Indian Penal Code, and as he had a previous conviction against him under section 12 of the Bombay Prevention of Gambling Act, 1887, the learned Magistrate was of opinion that it was not open to him to give the accused the benefit of the provisions of section 562 of the Criminal Procedure Code relating to first offenders. On appeal the learned Sessions Judge of Surat was of opinion that the provisions of section 562 (1) of the Criminal Procedure Code could be applied to the case, on the ground that the previous conviction being under a local law, did not prevent the operation of the section. The learned Judge considered that there was some analogy between the present case, and the case of *King-Emperor v. Khan Muhammad*,⁽¹⁾ which dealt with the construction of section 75 of the Indian Penal Code. But there is clearly no assistance to be derived from a decision under section 75 of the Indian Penal Code, because that section deals only with previous

⁽¹⁾ (1904) 1 Cr. L. J. 1061.

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convictions under specified chapters of the Code, and a conviction under some other law would not attract the operation of the section. Section 562 (I) is expressed in general language. It applies to a person convicted of an offence punishable with imprisonment of not more than a certain period, and, in my opinion, that sub-section, unlike sub-section (IA), which only applies in the case of convictions under particular sections of the Indian Penal Code, covers the case of a conviction under any law, and if that is the correct construction of the operative part of the section, it is, in my opinion, impossible to limit the "previous conviction" which prevents the operation of the section to a conviction under the Indian Penal Code. The actual words of the sub-section are, "and no previous conviction is proved against the offender". The offence under section 12 of the Bombay Prevention of Gambling Act is not a very serious offence, but still it is an offence, and the word "conviction" is actually used in the section. In my opinion, therefore, a conviction under the Bombay Prevention of Gambling Act is a "previous conviction", and that being so, the learned Magistrate was right in thinking that he could not apply the provisions of section 562 (I). We must, therefore, allow the application, and set aside the order of the learned Sessions Judge. Having regard to the fact that the accused, who was sentenced to two months' rigorous imprisonment, and a fine, was released on bail after eighteen days, as long ago as the middle of July, I think it is not desirable to direct his re-arrest, and we, therefore, reduce the sentence passed by the Magistrate to the period already undergone, and cancel the sentence of fine.

N. J. WADIA J. I agree.

Order set aside.

J. G. R.