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MUNGOL PRASHAD DICHIT v. SHAMA KANTO LAHORY CHOWDHRY.

The appeal is dismissed with costs.

PRINSEP, J.—I am of the same opinion. It appears to me that the first objection is disposed of by the judgment reported in *Kally Prosonno Hazra* v. *Heera Lal Mundle* (1). The second objection is disposed of by the Full Bench case in *Bissessur Mullick* v. *Maharaja Dhiraj Mahatab Chund* (2).

Appeal dismissed (3).

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice McDonell.

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Feby. 2.

SREERAM CHANDRA LERKAN *v.* BIPINDASS AND OTHERS.*

Gambling—Beng. Act II of 1867, *ss.* 5 *and* 6—*Unauthorized Entry and Seizure.*

A Deputy Inspector of Police is not authorized to enter and search an alleged gaming-house, unless he receives authority so to do from a Magistrate or a District Superintendent of Police.

Where such an unauthorized entry and subsequent arrest of persons in a gaming-house takes place, there being no other evidence of an offence under s. 5 of Act II of 1867, a Magistrate has no evidence before him on which he can convict.

The evidence required cannot be presumed under s. 6 of the Act, because that presumption only arises when the proceedings are authorized by s. 5.

THIS was a case referred to the High Court under s. 296 of Act X of 1872.

It appeared that a Sub-Inspector of Police, of his own accord, and without any instructions from a Magistrate, took upon him-

(1) I. L. R., 2 Calc., 468.

(2) B. L. R., Sup. Vol., 967; S. C., 10 W. R. (F. B.), 8.

(3) The same point was also decided in the case of *Bomnigri Moigri* v. *Ishen Chunder Ghose*, Special Appeal, No. 221 of 1878, heard by the same Judges on the same day as the above.

* Criminal Reference, No. 191 of 1877, from an order made by H. C. Richardson, Esq., Sessions Judge of Nuddea, dated Krishnaghur, the 6th January 1877.

self to enter a house where gambling was said to be going on, and arrested certain persons whom he found there, and on their being taken before a Magistrate, the latter convicted them under Beng. Act II of 1867, and inflicted on them a fine.

On the record coming before the Sessions Judge, he was of opinion that, having regard to s. 5 of Beng. Act II of 1867, and the Notification at page 1181 of the *Calcutta Gazette* of the 24th June 1868, the proceedings taken were entirely irregular; and he, therefore, sent the record up to the High Court in order that the Magistrate's order should be set aside.

The aforesaid Notification was dated the 17th of June 1868, and was as follows:—"Under s. 5, Act II of 1867, 'an Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant-Governor of Bengal,' it is hereby declared that only police officers of or above the rank of Sub-Inspector are authorized to exercise the powers described in that section."

No one appeared to argue the case.

The opinion of the High Court was given by

MITTER, J.—We concur with the Judge that the order of the Deputy Magistrate of Ranaghat, dated the 7th September 1876, in the above mentioned case, is illegal, and must be quashed.

One of the questions raised before the Judge was, that Beng. Act II of 1867 has not been extended to Ranaghat in accordance with the provision of s. 11 of that Act. Upon this point the Judge has expressed no opinion, and we have before us no materials from which we can say it has been extended to Ranaghat. But taking it for granted that it is applicable to Ranaghat, we still think the conviction in this case cannot stand.

It is clear that proceedings were commenced by an act on the part of a police officer, who, under s. 5 of the Act, was not authorized to do it. The Notification referred to in the explanation of the Deputy Magistrate submitted to the Judge would make the deputation of a Sub-Inspector of Police for

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SREERAM CHANDRA LEHKAN v. BIPINDASS.

entering and searching an alleged gaming-house legal, but he must receive his authority for that purpose from a Magistrate of a District or a District Superintendent of Police. In this case such authority was not given.

This being so, we cannot say that there is any evidence on the record, that the house which was entered and searched was a gaming-house within the meaning of the Act. We have gone through the record, and we find no evidence bearing upon this matter. It cannot, we think, be presumed under s. 6 of the Act, because that presumption only arises when the proceedings are authorized by the preceding section, which, as we have observed before, was not the case here.

The order of the Deputy Magistrate, therefore, must be quashed; the fines, if realized, must be refunded; and the properties, which have been declared to be forfeited to Government, must be restored to the parties from whose possession they were taken.

Conviction set aside.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

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Dec. 2.

THE EMPRESS *v.* NIPCHA AND ANOTHER.*

Sanction to Prosecute—Power of District Magistrate to proceed where Prosecutor has not availed himself of the Sanction—Amendment of Charge—Criminal Procedure Code (Act X of 1872), ss. 450, 470.

Where sanction has been given under s. 468 of Act X of 1872 by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 142 without complaint.

REFERENCE to the High Court under s. 296 of the Criminal Procedure Code (Act X of 1872).

One Hanif had been charged before a Deputy Magistrate with theft on the evidence of two chowkidars. He was, however, acquitted, and the Deputy Magistrate gave the accused permis-

* Criminal Statement, No. 714 of 1878, from an order made by H. Beveridge, Esq., Sessions Judge of Rungpore, dated the 21st November 1878.