

affect the Magistrate's powers as regards the original sentence under s. 58. It cannot be denied that, standing by itself, the sentence under s. 58 is perfectly legal; but it is contended that, by reason of the additional sentence of imprisonment under s. 74, the term of imprisonment in default of payment of the fine imposed under s. 58 is excessive, and therefore illegal. We see no valid reason for this contention, and indeed it would be an anomaly if a sentence perfectly legal under s. 58 should become otherwise, because the offender had rendered himself liable to an *additional* punishment on account of a previous conviction under the Beng. Excise Act.

We observe that this case was heard by the Magistrate on the 6th, 9th, and 16th November, though it was of a nature which should ordinarily have permitted of its decision at the first hearing. No reason is assigned for the postponements, if it existed, or that they were owing to the absence of the necessary evidence for the prosecution. We think it necessary to notice this, because frequent postponements add considerably to the expense incurred by the parties, and should be avoided.

We observe also that, in the affidavit it is stated on behalf of appellants that "application was made to the Magistrate for copies of the evidence in this case, but the same was refused," notwithstanding the terms of s. 170 of the Presidency Magistrates' Act.

Conviction set aside.

Before Mr. Justice Mitter and Mr. Justice Maclean.

IN THE MATTER OF THE PETITION OF PANJAB SINGH AND ANOTHER:

THE EMPRESS *v.* PANJAB SINGH AND ANOTHER.*

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Criminal Procedure Code (Act X of 1872), s. 227, cl. (h)—Recording Reasons for Conviction—Practice of High Court on Revision.

Under cl. (h) of s. 227 of the Criminal Procedure Code, although a Magistrate is not required to record any evidence, he should, in recording his reasons for the conviction, state them so, that the High Court, on revision,

* Criminal Motion, No. 300 of 1880, against the order of A. W. Paul, Esq., Assistant Commissioner of Darjeeling, dated the 23rd October 1880.

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may judge whether there were sufficient materials before him to support the conviction.

Where they were not so stated, the High Court, on motion, set the conviction aside.

THE accused were found guilty of an offence under s. 447 of the Penal Code. It appeared there was gambling going on in the house of one Jakri, in which the accused confessedly took part. The gambling ended in a quarrel and consequent disturbance, which caused great annoyance and alarm to the women in the house. The Assistant Commissioner was of opinion, that although the original entry might be considered lawful, their remaining there to gamble and creating a disturbance was sufficient to bring the accused within s. 447 of the Penal Code.

Against this order the accused filed a petition in the High Court.

Mr. M. M. Ghose and Baboo Boidonath Dutt appeared for the petitioners.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—We are of opinion that the conviction in this case must be set aside. The lower Court is of opinion that the prisoner is guilty, under s. 447 of the Indian Penal Code, of criminal trespass. In order to constitute that offence, it is necessary to establish, on behalf of the prosecution, that the entry into another person's property must have been made with intent to commit an offence, or to intimidate, insult, or annoy that person in his possession, or that, having lawfully entered the premises, remaining there for the purpose of intimidation, annoyance, or insult, or with intent to commit an offence. Now in this case, which was tried summarily, we have simply before us the finding and the reasons upon which the conviction is based under cl. (h), s. 227 of the Code of Criminal Procedure. Under that section the Magistrate was not required to record any evidence.

We think that, under the clause in question [cl. (h) of s. 227], a Magistrate, in recording his reasons for the conviction, should

state them so, that this Court, on revision, may judge whether there were sufficient materials before him to support the conviction.

In this case we do not find that there is any finding at all in the reasons stated, that the applicants remained in the premises on which they are alleged to have trespassed with any such intents as are mentioned in s. 447 of the Penal Code. All that the lower Court upon that point says is this, that "their original entry on the property was lawful, but their remaining there to gamble and creating a row must be held to bring the accused within s. 447." It does not even say that they remained there in order to create a row, but simply that they remained there to gamble, and then created a row afterwards. Even if the lower Court had found that they remained there to create a row, it would have been doubtful whether such a finding would have been sufficient, because it would have been as much consistent with the knowledge that they were likely to annoy as with the intention to do so. But as the finding now stands, there is not a shadow of ground for supposing that there was any evidence before the lower Court upon which it could be found that they remained there with any such intent as it is necessary to establish under s. 447.

The conviction is, therefore, set aside, and the applicants directed to be released.

Conviction set aside.

CRIMINAL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Maclean.

MONA SHEIKH *v.* ISHAN BARDHAN.*

*Criminal Procedure Code (Act X of 1872), s. 211—Order of Acquittal—
Compensation to Accused.*

An order for compensation against a complainant may be made on an order of acquittal under s. 211 of the Criminal Procedure Code.

* Criminal Reference, No. 211 of 1880, and letter No. 2987 from A. J. Alexander, Esq., Magistrate of Mymensing, dated the 14th December 1880.

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