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Munshi and ors. Vs. State

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Court : Allahabad

Decided On : Nov-12-1953

Reported in : AIR1954All356

Judge : Harish Chandra, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 263, 264 and 350; Public Gambling Act, 1867; Uttar Pradesh Public Gambling Act, 1917 - Sections 13

Appeal No. : Criminal Ref. No. 206 of 1952

Appellant : Munshi and ors.

Respondent : State

Advocate for Def. : H.N. Seth, Adv. for ;Govt. Adv.

Advocate for Pet/Ap. : G.P. Bhargava and ;N.D. Ojha, Advs.

Judgement :
ORDER

Harish Chandra, J.

1. This is a reference by the learned Sessions Judge of Mathura recommending that the convictions and sentences passed upon the accused persons under

Section 13 of the U. P. Public Gambling Act be set aside.

2. It appears that the case was started by a Magistrate as a summary trial. He examined some witnesses but before he could finish the case he was replaced by another Magistrate. The accused did not demand a 'de novo' trial and the learned Magistrate proceeded to conclude the trial of the case. He examined the defence witnesses and, after considering the notes of evidence recorded by his predecessor, convicted the applicants and sentenced them to fines. No doubt, a Magistrate may under the law, if not objected to by the accused, proceed with a case which has been begun by another Magistrate and take into consideration the notes of evidence recorded by that Magistrate. But in a summary trial no record of evidence is maintained. But the Magistrate may, for his own convenience jot down some notes of evidence. Obviously such notes cannot be suitably used by another Magistrate who may subsequently be entrusted with the trial of the case, and in my opinion the conviction by the Magistrate based as it was on the notes of the evidence of witnesses who were examined before his predecessor was not in order.

3. Another point taken by the learned Sessions Judge is that the place was not a public place and that, therefore, the accused could not be convicted under Section 13. Section 13 makes it an offence to game in any public street, place or thoroughfare. In this case, as would appear from the charge sheet submitted by the police, the gaming was taking place in an 'arhar' field on the road side, and it also appears to be sofrom the notes of evidence recorded by theMagistrate.

4. The question is whether the accused persons can be said to have committed an offence under Section 13. It is argued on behalf of the applicants that the field cannot be described as a public street, place or 'thoroughfare. No doubt, a public street, place or thoroughfare is not necessarily a street, place or thoroughfare where the public has a right to go or which the public has a right to use. If a street, place or thoroughfare is in fact used by the public, it will be a public street, place or thoroughfare within the meaning of that section.

On behalf of the State I have been referred to the case of -- 'Emperor v. Ballu Singh : AIR1938 All209 . In that case the accused persons were found gaming on

the edge of a grove a few paces away from the public pathway, and there was nothing to show that the place was enclosed in any way or that the public were usually refused access to or excluded from it. The case was decided by Mr. Justice Allsop and ho observes :

'I think it must be common knowledge that ordinarilyB these groves in Indian villages are open to anybody to sit in. There is normally no interference with anybody who wishes to have access to a grove of this kind. The accused persons themselves were in the grove and there is nothing to show that they had any connection with the owners of it or of the fruit or trees in it. They were themselves in the grove as members of the public.'

The learned Judge saw no reason for interference upon that point. I have, however, been referred to a number of cases on behalf of the accused persons in regard to the interpretation put upon the words 'public street, place or thoroughfare'.

In the case of -- 'Queen-Empress v. Sri Lal', 17 All 166 CB), a Division Bench of this Court held that a chabutra which was neither a place to which the public had a right of access nor a place to which the public were ever permitted to have access was not, though it adjoined a public road, a 'public place' within the meaning of Section 13. In another case -- 'Lala v. Emperor AIR 1930 Oudh 394 (C), Mr. Justice Pullan observed that a public place was one which was in full view of the public and one to which the public had access. The verandah of a shop adjoining a public road was not a public place. The point has been clearly put, if I may say so with respect, by Mr. Justice Kanhaiya Lal in the case of -- 'Emperor v. Bashir', AIR 1922 Oudh 275 (D). He says:

'A public place must be a place which is either open to the public or is used by the public and the publicity of its situation is not a necessary element of the offence any more than public ownership.'

5. In another case, -- 'Emperor v. Sripal : AIR1934 All17 , Mr. Justice Iqbal Ahmad says:

'The mere fact, that that spot was visible to the members of the public who used the footpath, cannot make that spot a 'public place'. In order to be a public place or a public thoroughfare within the meaning of Section 13, Gambling Act, the place or the thoroughfare must either be open to the public or actually used by the public, and the mere publicity of the gambling place or its visibility from a public place or a public thoroughfare is not sufficient.'

6. In the case of -- 'Ahmad Ali v. King Emperor', 1 All LJ 129 (F), Mr. Justice Aikman held that a grove was not a public place although it was found that the enclosure wall was broken in some places and a person could enter the grove through the breach.

7. It would thus appear that if the 'arhar' field in which the accused persons were found gambling could be regarded as a place used by the public they are guilty under Section 13 of the U. P. Public Gambling Act and not otherwise. If the field had been lying fallow and without any crop, it may be possible to say with a certain amount of justification that the field being near a public thoroughfare was in fact used by the public and was accordingly a public place. But we find that the arhar crop was standing in the field & although a member of the public could possibly go into the field without hindrance it cannot be said that it was a place used by the public. If the owner of the field were however present, he would presumably object to an outsider going into the field. In my opinion, Section 13 of the U. P. Public Gambling Act cannot apply in the circumstances of the present case.

8. I, accordingly, allow the reference and setting aside the convictions and the sentences passed upon the applicants, direct that they be acquitted. The fines, if paid, will be refunded.

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