

State Vs. Dohana Jamnadas and ors.

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Court : Gujarat

Decided On : Feb-03-1961

Reported in : AIR1961Guj182; (1961)0GLR501

Judge : J.M. Shelat and; A.R. Bakshi, JJ.

Acts : [Bombay Prevention of Gambling Act, 1887](#) - Sections 12

Appeal No. : Criminal Appeal No. 59 of 1960

Appellant : State

Respondent : Dohana Jamnadas and ors.

Advocate for Def. : N.C. Trivedi, Adv.

Advocate for Pet/Ap. : H.K. Thakore, Asst. Govt. Pleader

Judgement :

Shelat, J.

1. Mr. Trivedi, however, raised a point of law and contended that the ladies waiting room at this Railway station cannot be said to be a place to which the public have or are permitted to have access and, therefore, Section 12 of the Act ([Bombay Prevention of Gambling Act, 1887](#). Ed.) would have no application. He argued that male passengers are excluded though they have Railway tickets with them from

entering this room and an entry into this room by a male passenger even with a Railway ticket of the necessary class is prohibited and made punishable under Section 119 of the Railways Act. A section of the public having been thus excluded from the (use?) of this room would preclude ladies waiting room from being a place to which the public have or are permitted to have access. He contended that if the Legislature wanted the word 'public' also to include a section of the public, viz., only the female passengers with Railway tickets of the necessary class, the Legislature would have used the words 'the public or a section of the public'. That not having been done, we would not be justified to treat the ladies waiting room at this station as a place to which the public have or are permitted to have access. It is clear from Section 12 that the important words in this part of the section are the words, 'a place to which the public have or are permitted to have access'¹. Now, there can be no doubt that Railway platforms are places to which any member of the public has and is permitted to have access. The fact that a platform pass is necessary for one to enter into such a platform makes no difference as the platforms are for the use and benefit of the public and the members of the public are therefore permitted to have access to such platforms. A condition may be attached to the entry, by the 'public, viz., the possession of a platform pass. But such a condition obviously is to avoid over-crowding and is no restriction to the general permission given to the members of the public to have access to the platform. Likewise, the public or municipal parks are places to which the public have or are permitted to have access. Similarly, a municipal zoo would also be a public place as the public have or are permitted to have access. It may be that a condition may be attached to the entry at such places such as a ticket or a fee but nevertheless that condition does not preclude such a park or zoo from being considered a place to which the public have or are permitted to have access. The test of a place being a public place is whether it is open to the members of the public or not even though there may be certain conditions attached to the entry or the use thereof. What is required is that such a place must be open for entry by an indeterminate number of members of the public and must not be open only to a definite or a determinate number. The question as to the meaning to be attached to these words arose in *Mangubhai Dahyabhai v. Emperor*, 32 Bom LR 790; (AIR 1930 Bom 369). The accused there were found gambling in a hotel (tea shop) in

the city of Surat. They were tried and convicted of the offence under Section 12 of this Act and sentenced to pay a fine of Rs. 100/-. It was held by Mirza and Broomfield, JJ. that the expression in a place to which the public have or are permitted to have access includes a hotel. A reference was made in this decision to two earlier decisions of the same High Court, *Emperor v. Hussein Noor Mahomed*; 8 Bom LR 22 and *Emperor v. Chennappa*, 15 Bom LR J01. It is clear that the decision in 8 Bom LR 22 was given prior to the date of the amendment of Section 12(a) which inserted into this section the words, 'or thoroughfare or in any place to which the public have or are permitted to have access'. With regard to the decision in 8 Bom LR 22 the learned Judges in AIR 1930 Bom 369 observed that though Section 12(a) of the Act was quoted in the footnote of the report of the case it was not clear from the report whether the section which the Court was considering was the old section or the one since its amendment in 1910. They observed that these words in Section 12(a) of the Act would include a hotel for the public have a right to go to the hotel provided there is accommodation available in it, and can be said to have or are permitted to have access to it. They further observed that it was no longer necessary to interpret the words, 'place' appearing in this section ejusdem generis with the words 'public street' and 'thoroughfare' and that the object of the amendment in 1910 was to free the word 'place' which had been originally used in that section from the restricted meaning which it was held to bear, appearing as it did between the expression 'public street' and the word 'thoroughfare'. The test, therefore, that was laid down in this decision was whether the public have a right to go to a place concerned even though the entry or use of such a place was governed by limitations such as the limitation of accommodation. Though the owner of a hotel has a right to exclude a person on the ground of want of accommodation, it would be no consideration to hold that therefore it is not a public place. If a hotel or a tea shop is a place to which the public are said to have or are permitted to have access, there can be no reason to hold that a waiting room at a Railway station is not a place to which the public have or are permitted to have access. The very words, 'permitted to have, access' would seem to indicate a condition attached to the entry or the use of such a place and yet it would be a public place within the meaning of Section 12 of the Act, Waiting rooms at Railway stations are obviously for the facility of the members of the public who

travel by railway. It is also clear that it is for the convenience and facility to the members of the public that two such rooms are provided for, one for the use of female passengers and the other for the use of male passengers. But it must be borne in mind that female passengers of all classes holding Railway tickets of certain classes are entitled to and are permitted to have access to the ladies waiting rooms. Merely because one of the two rooms has been reserved for a section of the public does not mean that it is a place to which the public have no access, or are not permitted to have access. The mere fact that ladies waiting room is reserved for a part of the public cannot take out such a waiting room to be taken out from the definition in Section 12. Mr. Trivedi next referred us to the decision in *Badr-ud-din v. Emperor*, 21 Cri LJ 691: (AIR 1920 Lah 262). This was a decision under the Public Gaming Act and not under the Act under consideration. It was there held that the place near a water tank in the Outskirts of a Railway station was not a public place within the meaning of Section 13 of the Public Gaming Act. The place where the water tank was situate obviously was not a place to which the public would have access or would be permitted to have access. But apart from that factor the words used in Section 13 of the Public Gaming Act are not the same as those used in Section 12 of the present Act. This decision, therefore, would have no application, Reference was also made to the decision in *Tahirali v. Emperor*, 37 Cri LJ 876: (AIR-1936 Sind 90). It was a case under Sec. 12 of the Bombay Prevention of Gambling Act. The accused in that case were found playing in a private garden belonging to one Abdul Hussein to which only such respectable members of the public as the owner permitted had access. It was argued that such a garden was not a public garden but a private garden. It was there held that no distinction can be made in construing the expression, 'any place to which the public have or are permitted to have access', between a right conferred on the public by a statutory provision or a resolution of a Municipality, and a right conferred on the public by a private owner. The deciding factor was not whether the place is or is not owned by a private individual or a statutory body, but the use to which it is put. If a private owner invited either expressly or by implication the public generally to enter his garden, then so long as that invitation- is extended to the public genrally, so long the garden is a place to which the public have or are permitted to have access within the meaning of the

section. The fact that the owner reserves to himself the right to exclude undesirables is not the deciding factor. This decision in our view is contrary to the submission made by Mr. Trivedi and it is difficult to understand how it can possibly help the accused. Reference was also made to State v. Magaulal Panachand, AIR 1953 Sau 112. But the question there was whether a room occupied by a lodger in a hotel would be a place to which it can be said that the public have or are permitted to have access. It was there held that even though the hotel can be said to be a place would fall within the scope of Section 12, a room in such a hotel occupied by a lodger in consideration of his having paid a certain amount cannot be said to be a place to which the public have or are permitted to have access. Lastly, Mr. Trivedi referred to Emperor V. Somabhai Govind-bhai, 40 Bom LR 1082 : (AIR 1938 Bom 484). It is true that in that case a Full Bench of the High Court of Bombay considered the decision in Emperor v. Jusb Ally, 7 Bom LR 333, as having been correctly decided. Certain observations made by Broomfield, J. there would at first sight appear to be in favour of the contention of Mr. Trivedi. It is however clear from the reading of that decision that the learned Judges were not concerned with the interpretation of the word 'place' in Section 12 but were concerned with altogether a different question. The accused in that case was arrested at Anand station which undoubtedly was a place to which the public have access. On being searched he was found to be in possession of a substantial amount of money which he was taking to another place for the purpose of distribution. Certain Chits which were instruments of gaming were also found from his possession. He was charged under Section 12 of the Act, for gaming in a public place, viz. Anand Station. It was contended on behalf of the State that taking into consideration the definition of the word 'gaming' in conjunction with the provisions of Section 12(a), anyone who is doing in a public place any act intended to aid or facilitate betting or the other matters referred to in the definition, including the distribution of winnings, shall be punishable under Section 12. That contention was negatived and it was held that before an accused can be convicted under Section 12, the prosecution would have to establish that gaming at a public place, that is to say, the place to which the public have or are permitted to have access had actually taken place. The decision in 40 Bom LR 1082: (AIR 1938 Bom 484), being clearly on a question quite different from the one which is before us, can

hardly be of any assistance. In our view, the learned trial Magistrate was wrong in finding that the ladies waiting room at Jetalsar Railway station was not a place to which the public have or are permitted to have access.

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