

Hemanta Kumar Sen Vs. Emperor

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Court : Kolkata

Decided On : Jul-15-1921

Reported in : AIR1923Cal135,62Ind.Cas.577

Judge : Newbould and ;Suhrawardy, JJ.

Appellant : Hemanta Kumar Sen

Respondent : Emperor

Judgement :

1. The petitioner has been convicted under Section 18 of the Calcutta Suburban Police Act (II B.C. of 1866) and sentenced to pay fine of Rs. 5. The petitioner has a stall on the Kalighat Road, where from he sells soda-water and other aerated waters and non-intoxicating beverages. The only question that arises in this Rule is whether that place is a place of public resort and entertainment' within the meaning of Section 18 of Act II (B.C.) of 1866. In Section 51 of the Act, 'a place, of public entertainment' is defined as 'a place, whether enclosed or open, to which the public are admitted, and where any kind of food, drink or drug is supplied for consumption on the premises for the profit or gain of any person owning or having an interest in or managing such place and shall include a refreshment room, eating house, coffee house, tea-shop, liquor-house, boarding house, lodging-house, hotel, restaurant, tavern, wine-shop, beer-shop, spirit shop, arras-shop, toddy-shop, ganja-shop, bhang shop and opium-shop.' The shop kept by the petitioner does not come within this definition, because there is no place to which

the public are admitted, nor are the drinks supplied to the public, supplied to them for consumption on the premises. We do not think that, if it is not a place of public entertainment, it can be held to be a place of public resort within the meaning of Section 18 of the Act. The words used in that section are 'or other place of public resort and entertainment' and they follow the words, 'keeps any cooffe-house, boarding-house, eating house, lodging house.' Applying the principle of e(Sic)usdem generis to these words, we hold that a stall on which soda water is sold not for consumption on the premises cannot be held to be a place of public resort within the meaning of Section 18 of Act II (B C) of 1866. Taking this view, it follows that the petitioner committed no offence in selling these articles without a license for the sale thereof, We accordingly make this Rule absolute, set aside the conviction of the petitioner and direct that the fine, if paid, be refunded.

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