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(1957) 07 CAL CK 0001

Calcutta High Court

Case No: None

Saktipada Lauha and Others

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** July 30, 1957

**Acts Referred:**

- Public Gambling Act, 1867 - Section 11

**Citation:** (1958) CriLJ 167

**Hon'ble Judges:** Sen, J

**Bench:** Single Bench

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### Judgement

@JUDGMENTTAG-ORDER

Sen, J.

The petitioners in this case were convicted u/s 11 of the Bengal Public Gaming Act (Bengal Act 2 of 1867) and each of them was sentenced to pay a fine of Rs. 30/-, in default, to rigorous imprisonment for one month. Some materials said to be gambling materials were ordered to be destroyed and other goods seized including a sum of Rs. 303-4-0 were also ordered to be confiscated. The present Rule was directed against this order of conviction on a limited ground, viz. ground No. 2 which is in the following terms:

For that the place of gambling not being proved by the prosecution to be a "public" place as defined by the Act, the conviction is illegal.

2. The prosecution case was that on an information that gambling was going on in the village of Purandarpur the police went to the place which was just near a Hindu temple and succeeded in apprehending the three petitioners who along with others were found betting on a gambling board. This board with the money amounting to Rs. 303-3-0 was seized by the police. In defence the petitioners pleaded that they did not take part in the gambling and that they were arrested by mistake when they

started running at the sight of the police. They also disowned the ownership of the property seized and of the board-money.

3. On the point on which the present Rule was issued the finding of the learned Magistrate was that the space surrounding the temple was a "public place" within the meaning of Act 2 of 1867. Section 11 of the Act makes mention of "public market, fair, street, place or thoroughfare". In the present case where gambling was going on was "very near the temple as well as the place of the jatra performance. "Place" has been interpreted in a judgment of Chunder J. in the case of Anil Kumar Nag v. The State. 59 Cal WN 303 (A). His Lordship in that case pointed out that Section 11 of the Bengal Public Gaming Act, 1867, speaks of ""any public market, fair, street, place or thoroughfare". The word "place" has to be interpreted ejusdem generis, and must be, therefore, some such place as is like a public market or fair or street. The proper interpretation of public place will be ""where members of the public have an unrestricted right of entry", not where some private persons may legally prevent him from going in. His Lordship also relied on the decision of a Division Bench of this Court in the case of Khudi Sheikh v. King Emperor, 6 Cal WN 33 (B), where also the proper interpretation of ""public place" was held to be a place where members of the public ""have an unrestricted right of entry". His Lordship further cited the case of Brannan v. Peek (1948) 1 KB 68 (C) which was a case under the English Street Betting Act. Although the English Street Betting Act was not exactly in all fours with this Act, the question of "public-place" came up for interpretation in that case and the view of the law taken by this Court was accepted by Lord Godard as to the meaning of ""public place". Mr. Sen appearing on behalf of the State has cited the case of Hari Singh v. Jadu Nandan Singh, 8 Cal WN 458 (D) at p 459, wherein their Lordships Ghose and Stephen JJ. held that a place may be a public place though it is the private property of an individual the question whether it is so or not depending on the character of the place and the use actually made of it. Where the place is an open piece of ground, the presumption that it is a public place is more easily created than where it is a building or is surrounded by wall.

4. The learned Magistrate has held that, there was no interference to the entry of any body to the place of gambling. The above finding is, in my opinion, not enough to satisfy the test that the place was a public place within the meaning of the Act. The conviction and sentence passed in the case on the petitioners must be set aside and the fines, if paid, shall be refunded.

5. The order of the learned Magistrate confiscating the amount of Rs. 303-4-0 cannot also be supported. In the case of [Sukumar Bose Vs. Emperor](#), it was held by Roxburgh and Ellis JJ. that there is no authority under the Gambling Act (Beng. Act 2 of 1867) for a Magistrate to direct the forfeiture of the money found with the accused) convicted for unauthorised betting at a racecourse. The order of confiscation of the money, although not in accordance with law, in the present case,

need not be set aside as the petitioners did not claim the money to be their own.

6. This Rule is disposed of accordingly.