

(1881) 01 CAL CK 0010

Calcutta High Court

Case No: None

In Re: Panjab Singh
and Another
 The
Empress

APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 5, 1881

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 227
- Penal Code, 1860 (IPC) - Section 447

Citation: (1881) ILR (Cal) 579

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

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 Sections 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 Clouse (h), Sections 227 of the Code of Criminal Procedure. Under that Sections the Magistrate was not required to record any evidence.

2. We think that, under the clause in question Clouse (h) of Sections 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.

3. 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 Sections 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 Section 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 u/s 447.

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