

1931

Present : Akbar J.

IBRAHIM SAIBO *v.* ABERAN *et al.*

764-765—P. C. Kurunegala, 20,645.

*Jurisdiction—Case referred by Government Agent from Village Tribunal to Police Court—Jurisdiction of Police Magistrate to try offence of gaming under Village Tribunal rules—Ordinance No. 9 of 1924, s. 64.*

A Police Magistrate has no jurisdiction to try the offence of gambling as defined under Village Tribunal rules even where the case has been transferred to the Police Court by the Government Agent acting under section 64 of the Village Tribunal Ordinance.

The offence of gaming may be established by the evidence of *indicia* of guilt, which create the statutory presumption under section 10 of the Ordinance, provided that the *indicia* are corroborative of positive independent evidence.

**A** PPEAL from a conviction by the Police Magistrate of Kurunegala.

*H. V. Perera*, for accused, appellant.

*A. Gnanaprakasam*, for complainant, respondent.

November 2, 1931. AKBAR J.—

The petitioner and eight others were charged in the Village Tribunal with committing the offence of gambling punishable under the Village Committee rules, but the Assistant Government Agent transferred the case to the Police Court of Kurunegala. An offence under the Village Tribunal Ordinance is committed when anybody gambles for a stake, and an offence under the Gaming Ordinance, No. 17 of 1889, can only be committed when "unlawful gaming" is committed as defined in the Ordinance. The latter offence is much more restricted than the former, unlawful gaming being only committed when there is an act of gambling for a stake in a place to which the public have access whether as of right or not or when it is committed in a common gaming place as defined in the Ordinance. Although a Police Magistrate had no jurisdiction to try the offence of gambling under the Village Committee rules, the Assistant Government Agent was right in referring the case to the Police Court of Kurunegala, but this only meant that the Police Court had jurisdiction to try the offence under the Gaming Ordinance, No. 17 of 1889, and not under the Village Committee rules. Although this was pointed out to the learned Police Magistrate before the beginning of the trial by counsel for the complainant, the Police Magistrate charged

the accused in the alternative under the Gaming Ordinance and also under rule 49 of the Village Committee rules. This he was not clearly entitled to do. In the course of his judgment although he convicted the accused under the Gaming Ordinance he seems to have thought that he had jurisdiction to try the offence under the Village Committee rules and that the two offences were more or less similar. When the judgment was read to me, I was of opinion that the conviction was wrong but as another accused had filed papers for the revision of these proceedings and as the learned Police Magistrate had stated in his judgment that he accepted "without hesitation" the evidence of the Peace Officer and the two witnesses he had called, I dealt with this case in revision. It is open to me in appeal to affirm the conviction if there is enough evidence to justify the conviction under section 4 of the Gaming Ordinance. Even though the Magistrate may have made the mistake in law which I have stated above, the learned Police Magistrate stated that he accepted the evidence of the complainant and his two witnesses. That being so, there was evidence to prove that the accused who are members of two different communities were gambling on the occasion in question at night for stakes and that cards were found there and also money; a packet of cards, gunny bags, and money were produced. It has been held by the Supreme Court in the case of *L. O. Modder v. A. M. Moham-mado Lebbe*<sup>1</sup> that evidence under the Gaming Ordinance may be established by *indicia* of guilt which create the statutory presumption under section 10 of the Ordinance, provided that those *indicia* are corroborative of positive independent evidence. In that particular case too there was a number of Sinhalese men and Moormen. Further cards were found on the premises and some of the inmates escaped on the entrance of the police as happened in this case. On the authority of this case and in view of the fact that the Magistrate believed the prosecution case I must uphold the conviction and dismiss the appeal.

*Affirmed.*

