

(1880) 04 AHC CK 0002

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Deoki Nandan Lal

RESPONDENT

Date of Decision: April 12, 1880

Citation: (1880) ILR (All) 806

Hon'ble Judges: Straight, J

Bench: Single Bench

Judgement

Straight, J.

The applicant in this case was convicted by the officiating Magistrate and Collector of Gorakhpur of an offence against Section 34 of Act XVIII of 1869, for not having truly set forth in a sale-deed executed by him to one Amirta the full amount of consideration-money thereby secured, and was ordered to pay a fine of Rs. 135. He appealed to the Sessions Judge of Gorakhpur, but under the order of this Court his appeal was transferred for hearing to the Judge of Benares, who on the 3rd February 1880, dismissed it. He now applies to this Court u/s 297 of the Criminal Procedure Code upon the following grounds:--(i) That a conviction could not properly be had in the absence of the original principal document; (ii) That the officiating Magistrate and Collector, being by Section 43 of Act XVIII, the actual prosecutor of the case, should not have sat to hear and dispose of it in his judicial capacity.

2. Dealing with this latter objection first, I am of opinion it is a well-founded one and should prevail. Both the Stamp Acts of 1869 and 1879 recognise the Collector as primarily responsible for the institution of prosecution for offences against those Acts, except where the Local Government generally, or he himself specially, has authorised some other officer to discharge such duty. The letter of the officiating Judge of Gorakhpur of the 1st September 1879, and the rubkar directing an inquiry under the Stamp Act of 1869 against the present applicant and Amirta were amply sufficient to justify proceedings. But the officiating Magistrate and Collector should

have detailed the case for hearing and disposal to some other qualified Magistrate, more especially when it was almost impossible for him to prevent his mind being influenced by the very forcible language in which the officiating Judge had couched his letter of 1st September 1879. The conviction must be quashed and a new trial had before such Magistrate, as the now officiating Judge of Gorakhpur may select.

(The learned Judge then proceeded to deal with the first point urged on behalf of the applicant.)