

(1909) 11 AHC CK 0008**Allahabad High Court****Case No:** None

Munshi and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Nov. 18, 1909**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 325

Citation: 4 Ind. Cas. 428**Hon'ble Judges:** Karamat Husain, J; George Knox, J**Bench:** Division Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

1. Munshi, Ganeshi, Ram Phal and Tika were convicted by a Magistrate of the First Class of Bulandshahr for an offence u/s 325, I.P.C. They were sentenced each of them to pay a fine of Rs. 10 and to imprisonment for one day. The Additional Sessions Judge of Aligarh has forwarded the case to us with a recommendation that the sentence be enhanced. Before sending the case on he called upon the Magistrate for any explanation that he might wish to offer. We agree with the learned Additional Sessions Judge that the explanation sent in by the Magistrate is a most extraordinary one. If any meaning can be given to it, it appears to bear this meaning that the learned Magistrate if he had been allowed to follow his own convictions as regards the nature of the case and the facts he would have dismissed the case as false and revengeful. We do not understand how under these circumstances he could bring himself to pass such an order as the conviction of an accused and the passing of a sentence upon him even though that sentence was in his opinion a light one. A Magistrate who does not follow his own conscience unreservedly in deciding as to whether a person is guilty or not is a Magistrate who has not learnt the first part of his duty. For obvious reasons we cannot and do not

make any pronouncement whether the accused is or is not guilty. Under the circumstances we have no alternative but to set aside the trial in toto and direct that the accused be tried by the District Magistrate of Aligarh or such other competent Magistrate as he may appoint to try the case.