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(1944) 06 CAL CK 0001

Calcutta High Court

Case No: None

A.N.M. Ashraf and Others	APPELLANT
Vs	
Surendra Nath Sen	RESPONDENT

Date of Decision: June 27, 1944

Acts Referred:

- Penal Code, 1860 (IPC) - Section 426, 427

Citation: (1949) CriLJ 487

Hon'ble Judges: Henderson, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Henderson, J.
This is a rule calling upon the District Magistrate of Hooghly and the complainant to Bhow cause why certain proceedings against the petitioners should not be quashed. They were summoned u/s 426, Penal Code on the complaint of one Karali Chaian Sen. He died and the petitioners were eventually acquitted under B. 247, Criminal P. C. His son, the present opposite party", then moved the Magistrate and they have now been summoned u/s 427 Penal Code, They have obtained this rule. I also issued a rule upon them to show cause why the order acquitting them u/s 247, Criminal P. C., should not be set aside.

2. Of course, Section 403 would be a bar to a re-trial of the petitioners under S. 426, This explains why they have been summoned u/s 427. The criminal allegation against them is that in ploughing a certain plot of land they damaged a crop which had already been sown by the complainant. In cases of this kind the allegation generally is that the loss amounts to above Kb; 5, In the present case the original complaint said nothing about it. The section actually noted in the petition was Section 426. The present opposite party has deposed that the damage was Rs. 300. The Magistrate made no attempt to elicit from him what crop was grown or how he estimated the damage at this erroneous figure. The

application was a transparent dodge to get over Section 403, Ori. minal P. C., and was a gross abuse of the pro. cess of the Court.

3. It remains to consider the other rule issued upon the present petitioners. On behalf of the opposite party Mr. Chattetjee contended that the section was wrongly applied to the case inasmuch as the complainant was dead at the time when the order was made."My attention has been drawn to two conflicting decisions of this Court. That in the case of Madho Chowdhury Vs. Turab Mian and Others supports the opposite party, No reasons however are given for the decision. The case of Purna Chandra Moulik Vs. Dengar Chandra Pal is to the contrary effect. There is nothing in the wording of the section itself to suggest that it has no application when a complainant is dead. The view taken in the latter decision has received considerable support in other Courts.

4. On the actual merits of the case, the dispute is obviously of a civil nature. On the original complaint as recorded by the Magistrate nothing was disclosed except a civil trespass and on these materials the complaint should have been dismissed. I am therefore not prepared to interfere and restore the original case for trial.

5. The rule issued on the District Magistrate and the complainant will accordingly be made absolute and I direct that the proceedings pending against the petitioners be quashed. The rule issued on the petitioners is discharged.