

(1910) 01 CAL CK 0001

Calcutta High Court

Case No: None

Lakhi Narayan Ghose

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Jan. 6, 1910**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 190(1)(c)

**Citation:** (1910) ILR (Cal) 221**Hon'ble Judges:** Stephen, J; Carnduff, J**Bench:** Division Bench

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**Judgement**

Stephen, J.

In this case the Deputy Commissioner of Singbhum ordered a prosecution of the petitioner for wrongfully cutting certain trees in a forest, and on reading the Explanation we must take him to have done this u/s 190(1)(c) of the Criminal Procedure Code. He also ordered certain trees to be attached.

2. This Rule has been granted on two points. The first is that he had no authority to order the prosecution; and the second, that he had no authority to attach the trees.

3. As regards the second part of the Rule, it is admitted that the order was without jurisdiction, and the Rule must be made absolute.

4. As regards the first part, what happened is as follows. The Deputy Commissioner was also the manager of the encumbered estate, and in that capacity ordered one Kedar Nath Sircar, a servant of the Court of Wards, to make certain enquiries. The order which is now complained of was made as the result of the report made by Kedar Nath. It is now argued, on the strength of the ruling in *Thakur Pershad Singh v. Emperor* 10 C.W.N. 775, that he had no authority to do so, because, having received the information as the manager, he could not act upon it as a Magistrate. In accordance with that ruling, I am of opinion that his action in this matter was

illegal, and that the present proceedings must accordingly be quashed. The Rule is made absolute.

Carnduff, J.

5. In the particular circumstances of this case, I am prepared to agree to the Rule being made absolute. It will, of course, be open to the authorities to reinstitute proceedings against the petitioner on a firmer basis, should they be so advised.

6. But I am not prepared to accept, without question, the ruling in *Thakur Pershad Singh v. Emperor* 10 C.W.N. 775, in so far as it lays it down that a Magistrate is not competent to act u/s 190(1)(c) of the Code of Criminal Procedure on any information which has been transmitted to him in another public capacity. This clearly goes beyond the provisions of the Code itself; and I am inclined to think that the safeguards supplied by those provisions are sufficient, and that there is no adequate reason, based, on general principles, for extending or amplifying them. If a Magistrate takes cognizance, under the clause referred to, on information received from any person other than a police officer, or upon his own knowledge or suspicion, then he is bound by Section 191 to give the accused an early opportunity for objecting and obtaining a trial at the hands of another Magistrate. And where a Magistrate is "personally interested" in a case, he cannot, u/s 556, try it, or commit it for trial, without special permission. These provisions follow the salutary rule that a Judge shall not be a Judge in what may be called his own cause: but they draw the line, advisedly as I imagine, at trial or commitment, and do not go the length of impeding mere cognizance of crime. Nor would it, in the circumstances of this country, be advisable to go so far; for, although it is undoubtedly better that a Magistrate should not move at all where he is, or has been, in any way-himself concerned, it is not difficult to conceive cases in which there might be no one but such a Magistrate competent to act, and his incapacity to issue process-might involve the escape scot-free of offenders. I should hesitate, therefore, to add to the Statute law on the subject.