

(1909) 11 CAL CK 0001

Calcutta High Court

Case No: None

E.O. Lee

APPELLANT

Vs

H.L. Adhikary

RESPONDENT

Date of Decision: Nov. 9, 1909

Judgement

1. In this case a rule has been issued calling upon the District Magistrate to show cause why the proceeding against the petitioner should not be quashed on the ground that the prosecution has not been legally instituted or in the alternative why the case should not be transferred to some competent Magistrate in Alipur or some other District. The grounds on which it is said that the prosecution has not been legally instituted are briefly these: Section 190 of the Criminal Procedure Code describes the conditions requisite for the initiation of proceedings, and it is thereby provided that the Magistrate "may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such an offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed." We are told by the applicant that in this case it is suggested on the part of the prosecution that cognizance has been taken under Clause (b), that is upon a police report of such facts. Now, Section 173 indicates what that police report should set forth, and provides that a police report should set forth, among other things, the nature of the information. It is pointed out that in the circumstances of this case it is of paramount importance that at this initial stage it should appear what the nature of the information is. The petition sets forth the case of the present applicant in considerable detail indicating precisely what he did, and the precautions that he took. If this version be accepted as true, it is difficult to see how any case can succeed against him. Not only has the applicant set out his case in the way I have described but no cause has been shown against the present applicant, nor have his allegations been questioned in any manner. Now, as a matter of fact, the police report which has been shown to us in this case does not set forth the nature of the information, it is absolutely silent on that point; and it would seem that the regular

form adopted in these cases is equally defective. In the circumstances, and having regard to the further fact that no cause has been shown, we think that the proper order for us to make will be to set aside the proceedings. If it is intended to proceed against applicant, then the procedure of the Code as indicated in Section 190 and also in Section 173, if it be requisite to rely on that section, must be followed.