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(1913) 07 CAL CK 0001

Calcutta High Court

Case No: Rev. No. 535 of 1913

Gaijuddi Howladar APPELLANT

Vs

Ainuddi Howladar RESPONDENT

Date of Decision: July 17, 1913

Final Decision: Dismissed

Judgement

1. This Rule was issued on the District Magistrate of Faridpur and the Opposite Party to show cause why the order passed under sec. 145 in this case should not be set aside on two grounds, first, that the Petitioner was not given an opportunity of examining the Sub-Inspector of Police ; and, secondly, that the judgment contains no finding of the fact of actual possession. It is not necessary to consider the second ground as this Rule must be made absolute on the first. Looking at the order-sheet of the Magistrate, we find that there was no proper reason for rejecting the Petitioner''s prayer for the examination of the Sub-Inspector. The Sub-Inspector had been cited as a witness on behalf of the Opposite Party and afterwards as a witness for the Petitioner. On an application filed by the Petitioner on the 8th February asking for summons against the Sub-Inspector, the Magistrate recorded an order that the Sub-Inspector was to corns with his diaries. After some adjournments in the case, on the date on which the case was to be heard, the Sub-Inspector did not appear, whereupon an application was made by the Petitioner to the Magistrate asking for summons against him. On this application, the Magistrate recorded an order which runs thus :--"This is simply vexatious. No process was asked for so long. Rejected." This order was clearly bad.

2. We think that the order under sec. 145 was a bad order and made without jurisdiction on the first of the two grounds mentioned in the petition. The Rule is made absolute. The order under sec. 145 is set aside.