

(1924) 01 CAL CK 0002

Calcutta High Court

Case No: None

Kamal Mandalini

APPELLANT

Vs

Paramasukh Chakrabutty

RESPONDENT

Date of Decision: Jan. 4, 1924**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 544

Citation: AIR 1926 Cal 289 : 90 Ind. Cas. 488**Hon'ble Judges:** Suhrawardy, J; Page, J**Bench:** Division Bench

Judgement

Suhrawardy, J.

This Rule arises out of a suit brought by the plaintiff for recovery of a certain amount due to him on account of the diet expenses allowed to him by the Criminal Court in a case in which the defendant was the complainant and the plaintiff was cited as a witness on his behalf. The Munsif of Bolepur exercising Small Cause Court jurisdiction decreed the suit.

2. An objection is taken before us that the Small Cause Court Judge had no jurisdiction to take cognizance of the suit under the Provincial Small Cause Courts Act and it is based mainly on Section 547, Cr. P.C. The facts are as follows: The plaintiff was cited as a witness on behalf of the defendant in a certain criminal case in which the defendant was the complainant. The plaintiff applied to the Court that he might be allowed the amount incurred by him as expenses for attending the Court on behalf of the complainant. On that petition the learned Sub-Divisional Officer passed the following order: "Complainant to pay." The sum allowed was Rs. 16-10-6. On the date on which the above order was passed the complainant paid Rs. 5. The plaintiff has now sued for the balance of Rs. 11-10-6.

3. It is argued on behalf of the petitioner that the only remedy open to the plaintiff was to request the Criminal Court u/s 547, Cr. P.C., to recover this amount as if it

was a fine, In my judgment, that section does not apply. It provides that any money (other than a fine) payable by virtue of any order made under the Code... shall be recoverable as if it were a fine. The learned Vakil for the petitioner has failed to point out any provision in the Code Under which this order of payment of diet money to a witness on the side of the prosecution was made. He has fallen back upon Section 544, Cr. P.C., and contends that the order might have been made under that section. But that section deals with an altogether different state of things. It empowers the Court to order that the expenses of the complainant and his witnesses should be paid by the Government under circumstances that may be considered proper by the Court. It does not empower the Court trying a complaint to order payment of diet money of a witness produced before it by the parties. That power is vested in the Court under the general rules of the High Court. It is, therefore, clear that the money in suit is recoverable by the plaintiff and that a suit may be brought for that amount unless the petitioner shows any authority to the Contrary which he has failed to do. It is not contended that it offends any rule of public policy nor is it shown how the Civil Court loses its ordinary jurisdiction to entertain a suit for recovery of money payable by the defendant and which cannot, be recovered in any other way. Some light upon this matter may be obtained from the decision of this Court in the case of *Nemai Chundra Ghose v. Ajahar Chowdhury* 8 C.W.N. 178 . I do not think that there is any substance in this Rule. It must accordingly be discharged with costs. We assess the hearing-fee at one gold mohur.

Page, J.

4. I agree. I do not think it necessary in, this case to go the length of laying down any general proposition of law as to the alleged right of a witness in a criminal case to obtain travelling expenses from the complainant because in this case it is perfectly clear from the judgment that the complainant, who is now the defendant, arranged with the plaintiff that the plaintiff should give evidence in the suit. Pursuant to that agreement the plaintiff attended the Court and a certain order was made by the Court that the complainant should pay to the plaintiff a certain sum. A part of that sum was immediately paid but the rest has not been paid. In these circumstances I, speaking for myself, without deciding any question of law of a general nature, in the circumstances of this case, think that there is no substance in the application. The Rule is, therefore, discharged.