**AIR 1931 Cal 760**

**Calcutta High Court**

**Case No:** None

| | | |
|---|---|---|
| Nawabali Khan | | APPELLANT |
| | Vs | |
| Chandrakanta Banerji | | RESPONDENT |

**Date of Decision:** Dec. 5, 1930

**Acts Referred:**
Criminal Procedure Code, 1898 (CrPC) â€" Section 476

**Citation:** AIR 1931 Cal 760

**Hon'ble Judges:** Rankin, C.J; Mallik, J

**Bench:** Full Bench

**Judgement**

Rankin, C.J.
In this case, the Munsif made a complaint against a peon of his Court on the footing that he had made a return purporting to

have served several persons, at a certain place, with process of the Court while, in fact, those persons were not at that place at all and never were

served. The defence, which the peon set up, was that he had served some people on the identification of the identifier and that it was just possible

that the identifier arranged for certain persons to personate the persons upon whom the process was to have been served. This matter went on

appeal to the District Judge and the District Judge did not consider that this defence was a sufficient ground for interfering with the order directing a

complaint. In this Court, the main point relied on is that neither the Munsif nor the District Judge has obeyed the terms of Section 476, Criminal

P.C., and recorded a finding to the effect that it is expedient in the interest of justice that an inquiry should be made into the offence alleged. There

can be no doubt that the question whether there is a case against the person charged is not the sole question in deciding whether it is expedient in

the interest of justice that an inquiry should be made.

2. It may be that, in any particular case, there is reason to think that the offence was committed and yet it may be abundantly plain that there is no

sufficient evidence to make it desirable to direct a prosecution. There may be other cases of offences which, because they are trifling or otherwise,

are not such that it is expedient in the interest of justice that an inquiry should be made. I rather protest against the idea however that, if there is a

prima facia ground for thinking that a serious offence has bean committed, there is necessarily very much more in the case to inquire into. Some

people seem to think that, even in spite of the gravity of ""the offence, it is very doubtful whether the question of the commission of the offence

should be inquired into. I do not take that view at all. Still it is in some cases very important to consider not merely whether there is a good prima

facie ground for thinking that the offence was committed, but also other matters upon the question whether it is expedient even so that the

proceedings should go on. In one case, Keramat Ali Vs. Emperor, where it was proposed to prosecute a man merely by showing that he had

made contradictory statements, it seamed to me to be very doubtful whether the case was such that in any view of it a prosecution should take

place.

3. I pointed out that the lower Court had not recorded the finding as required by the section, and I then said in that case that, as the finding had not

been recorded, I did not see fit to infer that the matter had been properly considered. I did not mean to lay down as a rule of thumb that, in all

cases where those words of the section were not copied out in the judgment, this Court would necessarily interfere in revision. In particular, in

cases where the offence is of considerable gravity, it will be manifestly unreasonable to take the view that the Court can have directed a complaint

without considering whether it is expedient in the interest of justice so to do. If one finds that the Courts have not obeyed the terms of the section

one is rather inclined to doubt whether they had the terms and conditions of the section present in their minds. In this case however both the lower

Courts have come to the conclusion that there is a prima facie case against this peon for making this false return and for taking part in what is

certainly a very grave fraud upon the Court. It does not seem to ma to be one of those cases where there is anything much to consider except the

question whether or not the evidence is such as to make it likely that the offence is brought home to the peon. On this ground, it seems to me that it

would not be right to interfere in the present case and that the rule should be discharged.

Mallik, J.

4. I agree.