

**(1910) 09 CAL CK 0001**

**Calcutta High Court**

**Case No:** None

Lal Mohan Mandal and Another

APPELLANT

Vs

Kali Kishore Bhuymali

RESPONDENT

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**Date of Decision:** Sept. 30, 1910

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 323

**Citation:** 9 Ind. Cas. 965a

**Hon'ble Judges:** Holmwood, J; Doss, J

**Bench:** Division Bench

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### **Judgement**

1. This is a Rule calling upon the District Magistrate of Dacca to show cause why the convictions of, and sentences passed upon, the petitioners, u/s 323, Indian Penal Code, should not be set aside on the ground that there was no charge against them under that section and that the common object charged for the riot did not specify the intention to cause hurt.

2. It is admitted that the conviction cannot stand on the ground set out in the rule but we are asked to order a re-trial. No doubt, it would have been our duty to order a re-trial had it not been for the fact that the petitioners have undergone the sentence of 15 days" rigorous imprisonment which was passed against them in modification by the lower Appellate Court.

3. It appears, however, that at the time we issued the order for bail, on the 5th September 1910, the petitioners had only actually served 7 days; and we cannot understand how it was that our order did not reach the District Magistrate for 8 days. But beyond this, we understand that the learned Counsel who obtained the rule took the trouble to telegraph to the District Magistrate's Office, informing him of the result of the application; and it has been laid down by this Court in more than one case, of which we need only cite that of Bubu Ratnessari Pershad Narayan Sing v. The Empress 2 C.W.N. 498 that when a rule is issued by the High Court and

proceedings stayed, and, therefore, a fortiori, when there is an order for bail, the Magistrates on receiving reliable information thereof should stay their hands then and there.

4. Another matter in connection with this case is the delay which took place in the office of this Court. We had reason to complain of a similar delay during the course of the present week; and we must lay down most stringently that all bail orders be issued on the very day on which they are pronounced by the Judges sitting on the Bench, irrespective of the written order on the record.

5. The rule is made absolute and the convictions and sentences are set aside.