

(1922) 05 CAL CK 0005**Calcutta High Court****Case No:** None

Shaikh Aziz Mandal

APPELLANT

Vs

Girish Chandra Chowdhri

RESPONDENT

Date of Decision: May 10, 1922**Citation:** AIR 1923 Cal 320 : 68 Ind. Cas. 38**Hon'ble Judges:** Lancelot Sanderson, C.J; Panton, J**Bench:** Division Bench**Judgement**

Lancelot Sanderson, C.J.

This Rule called upon the District Magistrate to show cause why the conviction and sentence of the petitioner should not be set aside on the first and fifth grounds in the petition.

2. The first ground was that the learned Deputy Magistrate erred in not trying the case de novo and thereby failed to exercise a jurisdiction vested in him by law.

3. The Magistrate who tried the case was Mr. A. P. Peters. The case had, in the first instance, been before Mr. Section C. Das Gupta, a Sub-Deputy Magistrate, and on the 1st April 1921 the complainant and four prosecution witnesses were examined. The case was then adjourned to 12th April 1921, for recording the accused's statement. On the 10th April 1921, Mr. Section C. Das Gupta recorded the statement of the accused, charge was framed and three prosecution witnesses were cross-examined and the case was adjourned to the 3rd May 1921. Then, apparently, there were several adjournments, and on the 26th of June 1921 the Sub-Divisional Officer, Mr. P. Sen, made the following order:-" To my file, as Baba Section C. Das Gupta has been transferred. The accused prays for a de novo trial. Summon all the prosecution witnesses and defense witnesses."

4. Then, on the 22nd July 1921, Mr. P. San, transferred the case to Mr. A. P. Peters, a Deputy Magistrate, and on the 2nd September 1921, the complainant and the prosecution witness No. 4 were cross-examined.

5. Now, the first ground, as I have already stated, alleges that the Magistrate who tried the case, ought to have tried the case de novo. I am not satisfied that any application was made to Mr. Peters to have the witnesses, who had already been examined, other than the complainant and P. W. No. 4, re called into the witness box to be examined again and cross-examined. On the 2nd September 1921, the complainant and one of the pro-section witnesses were, in fact, cross-examined and, to my mind, it is clear from the petition that all the witnesses for the prosecution and defence were in Court, and I am satisfied that if the learned gentleman appearing for the defense had asked the learned Magistrate that any one of the witnesses, who had already been examined, should be put into the witness box again for the purpose of further examination and cross examination, such a course would have been adopted.

6. There is a general allegation in the petition to this effect that the petitioner's prayer for a de novo trial was not acceded to by the learned Magistrate. A bare statement of that kind makes little impression on my mind. It is a general allegation without any date or without any specifies allegation as to the date when and the person to whom the application was made or what the order was in respect of it and, as I have already said, it carries little weight. The result is that, with regard to the first ground, I am not satisfied that the Magistrate refused to allow the examination or cross examination of any of the witnesses, who had been examined on the previous occasion. So that, in my judgment, there is no substance in the first ground.

7. The fifth ground was, that the learned Magistrate's judgment must have been influenced by the impressions he received at the time of the local inspection and, as such, the judgment ought to be arrested. After the evidence in the case had been finished the learned Magistrate viewed the hem in quo at the leanest of both parties and, as I understand, in the presence of the Pleaders who were representing the respective parties. Having read the Judgment, I am satisfied that the Magistrate made and need this inspection solely for the purpose of enabling him to understand the evidence which had already been given and which was legitimate for him to do. Consequently, in my judgment, there is no foundation for the Bale in respect of the fifth ground in the petition.

8. For these reasons, in my judgment, the Bale should be discharged.

Panton, J.

9. I agree.