
(1924) 11 CAL CK 0021

Calcutta High Court

Case No: None

Rakhal Chandra
Biswas

APPELLANT

Vs

Jamini Kanta Banerjee

RESPONDENT

Date of Decision: Nov. 25, 1924

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147

Citation: AIR 1926 Cal 431

Judgement

1. Three persons, of whom the petitioner is one were sent up for trial for an offence u/s 147, Indian Penal Code. The petitioner and one of the other persons were tried and convicted under that section and sentenced to pay a fine of Rs. 25 each. On an appeal preferred by the petitioner and the co-accused who had been convicted the learned District Magistrate acquitted the co-accused of the petitioner and altered the conviction of the petitioner from that u/s 147, Indian Penal Code, to one u/s 323, Indian Penal Code, maintaining the sentence passed upon him.

2. The petitioner has obtained a Rule to show cause why his conviction and sentence should not be set aside on the ground amongst others that such an alteration of the conviction is not permissible as the petitioner had not been tried on a charge u/s 323, Indian Penal Code. The contention seems to be supported by the decision of this Court in the case of Genu Majhi v. King-Emperor 18 C.W.N. 1276 where following the decision in the case of Yakub Ali v. Lethu Thakur [1903] 30 Cal. 288, it was held by this Court that in the absence of a charge u/s 323, Indian Penal Code, framed during trial, the conviction u/s 147, Indian Penal Code, cannot be altered to one u/s 323, Indian Penal Code.

3. The Rule is accordingly made absolute. The conviction and sentence passed on the petitioner are set aside and the fine, if paid, will be refunded.