(1869) 04 CAL CK 0005

Calcutta High Court

Case No: None

The Queen		APPELLANT
	Vs	
Nawab Sing and Others		RESPONDENT

Date of Decision: April 2, 1869

Judgement

Norman, J.

The prisoners have been tried and convicted by the Judge of Bhagulpore of the forgery of a bond for rupees 195, bearing date the 18th of October 1867, alleged to have been executed by Dhotal Mahton, Maharaj Mahton, and Musahib Mahton. They appeal. The bond was specially registered u/s 52 of Act XX of 1866; and on the 6th of August 1868, upon production of the bond and the record signed by the Registrar, the Judge of the Small Cause Court of Monghyr passed a decree against Dhotal and the others. On the 18th of December, the Judge of the Small Cause Court set aside the decree, and gave his sanction to the prosecution u/s 170 of the Code of Criminal Procedure. On the same day, Mohan Sahu, the alleged obligee of the bond, prayed for a postponement, in order that his witnesses might attend. The Judge of the Small Cause Court, however, without passing any order on his petition, gave the required authority to prosecute, without going into evidence as to the genuineness of the bond. On the whole, we think, he was justified in doing so. No enquiry had taken place in the Small Cause Court as to the execution of the bond. That was a matter which had been gone into before the Registrar, before whom the bond and agreement recorded by the Registrar were put in, proved, and authenticated. The bond was simply produced before the Small Cause Court Judge with the record of the agreement, and verified by the petitioner. When the Small Cause Court Judge found, that a full enquiry had been made by the Sub-Registrar; that the Registrar, to whom the proceedings of the Sub-Registrar had been transmitted for sanction of the prosecution u/s 95 of the Registration Act, had come to the conclusion that the prisoners ought to be prosecuted for the forgery of the bond which had been put in and specially registered by the Sub-Registrar; that the Sub-Registrar had been giving evidence and assisting in the prosecution before the Magistrate; the Small Cause Court Judge, whose function in giving effect to the registered agreement by a decree and execution u/s 53 of

Act XX of 1866 was merely ancillary to that of the Registrar recording the agreement, was fairly justified in sanctioning the prosecution without further enquiry. He was, no doubt, wrong in setting aside the decree in favor of the plaintiff, as he did, without going into evidence. He should have enquired as to any special circumstances which might have justified such an order u/s 55 of Act XX of 1866, but with that we have now nothing to do.