(1868) 09 CAL CK 0005

Calcutta High Court

Case No: None

The Queen		APPELLANT
	Vs	
Kazim Thakoor		RESPONDENT

Date of Decision: Sept. 2, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.
The question is, "when two Judges, sitting as a Division Bench of the High Court, in appeal, in a criminal case, are divided in opinion, is it necessary, with advertence to section 420 of the Code of Criminal Procedure, that reference should be made to a third Judge; or is it sufficient, with advertence to section 36 of the Letters Patent, that an order should issue according to the opinion of the senior Judge?" We are of opinion that, notwithstanding section 420 of the Code of Criminal Procedure, the opinion of the senior Judge must prevail according to section 36 of the Letters Patent; and that it is sufficient, if the sentence or order in accordance with that opinion be signed by the senior Judge. In such case it ought to appear, on the face of the order, why it is signed only by one Judge.

2. Section 420 of the Code of Criminal Procedure speaks merely of the Sudder Court and of Judges of such Sudder Court. The Act itself was passed on the 5th of September 1861. The High Court was established under the 24 and 25 Vic., c. 104, which received the royal assent on the 6th of August 1861. The Letters Patent, under which the High Court now sits, was passed on the 28th of December 1865.

3. Section 11 of the 24 and 25 Vic., enacted that all Acts of the Legislature of India, which at the time of the establishment of the High Court were applicable to the Supreme Court at Fort William in Bengal, or to the Judges of that Court, shall be taken to be applicable to the said High Court and to the Judges thereof, respectively, so far as they might be consistent with the provisions of the said Act and the Letters Patent to be issued in pursuance thereof and subject to the legislative powers, in relation to the matters aforesaid, of the Governor-General of India in Council. This section, however, did not extend to the High Court; the provisions of section 420 of the Code of Criminal Procedure applied only to the Judges of the Sudder Court.

4. Section 13 of the said Act enacted, that subject to any laws or regulations which might be made by the Governor-General in Council, the High Court might, by its own rules, provide for the exercise by one or more Judges, or by Division Courts constituted by two or more Judges of the High Court, of the original and appellate jurisdiction vested in such Court, in such manner as might appear to the Court to be convenient for the due administration of justice.

5. By section 15 of the Rules of the High Court, it was declared that all powers and functions which were vested in the Court by the Letters Patent constituting the Court, and which were not otherwise expressly provided for by the rules of the Court, might be exercised by a single Judge or by a Division Court consisting of two or more Judges; and by Rule 26, it was provided that a Division Beach for the hearing of criminal appeals may consist of two or more Judges. These rules, coupled with section 13, provide that a Division Court may consist of two Judges, and a Court so constituted is subject to the provisions of section 36 of the Letters Patent.

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The signature of two Judges necessary.	Sec. 420:--The sentence or order of the Sudder Court, modifying, amending, or reversing the sentence or order of a Court on appeal or revision, shall be signed by at least two Judges of such Sudder Court. (Supplemented by Act XV 1862, s. 2).