
(1871) 06 CAL CK 0006

Calcutta High Court

Case No: Criminal Motion Case No. 48 of 1871

In Re: Bhadreswari
Chowdhraani

Vs

APPELLANT

RESPONDENT

Date of Decision: June 23, 1871

Judgement

Bayley, J.

We think this rule should be made absolute, and the order of the Extra Assistant Commissioner be set aside. The contention between the parties was as to the right of fishery; and the legal question raised before us in this reference is, whether the Extra Assistant Commissioner had legal evidence to proceed upon u/s 318.

2. It is admitted that no depositions on oath were taken, and it is not alleged that the Magistrate personally and with his own eyes saw any probability of a breach of the peace. All that was acted upon was the report of the police.

3. In a recent case, decided by Mr. Justice Paul and myself, on the 17th of this month, *The Queen v. Kali Chandra Shaw* See ante, p. 322, we stated on a similar question, that mere local enquiry and statements of parties not on oath are not sufficient data on which "to decide what party is in possession of land;" and further on, that any statements made not on oath cannot be regarded as evidence, and ought not to be relied upon as such." The only exception to this rule--if exception it can properly be called--is when a Magistrate on the spot, and with his own eyes, sees parties armed for a conflict, or otherwise in such a position as would create a breach of the peace.

4. A decision of Mr. Justice L.S. Jackson and Mr. Justice Markby, in *The Queen v. Ballabh Kant Bhattacharjee* See ante, p. 324, has been quoted to us as holding that, in some cases, the mere information of the police may be accepted. There might have been peculiar facts in that case which are not in this. The majority of decisions are the other way, so we follow them and the ordinary rule of law,--viz., that statements not upon oath are not ordinarily legal evidence.

5. It has, however, been pressed on us that the complainant himself, Nilchand Manji, had requested by a petition- that the Magistrate should proceed u/s 318; but on referring to the petition and the endorsement upon it, it is quite clear that all that the complainant has requested was with a view to the satisfaction of his own particular claim, and did not specifically ask for an enquiry and trial u/s 318.

6. In this view, we think that the orders of the Extra Assistant Commissioner, dated the 26th May 1870, and 24th November 1870, must be set aside, and this rule made absolute.

Mitter, J.

I am of the same opinion. The report of the police is no evidence whatever, and the Extra Assistant Commissioner ought not therefore to have accepted that report as sufficient to institute proceedings u/s 318.