

(1880) 10 CAL CK 0001

Calcutta High Court

Case No: None

In Re: Mutty Lall
Ghose and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 7, 1880

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 471

Citation: (1881) ILR (Cal) 308

Hon'ble Judges: Richard Garth, C.J; Maclean, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that there is no ground either for setting aside or for staying the criminal proceedings.

2. We consider that the Full Bench decision of this Court in In the matter of the Petition of Bam Prasad Hazra B. L. E. Sup.426; s.c., 5 W. R. Mis. 24 is a direct authority for the position, that where criminal proceedings have been instructed by a District Judge against the parties or their witnesses in course of a civil suit, the High Court has no power to stay those proceedings until the decision of the Judge in the civil suit has been heard upon appeal.

3. As regards the other point, we think that the ruling of the Court in the case of The Queen v. Baijoo Loll (I. L. R. 1 Cal. 450) has been somewhat misunderstood. It seems to be supposed from that ruling, that a Court, either civil or criminal, which has heard a case tried, has no right to institute proceedings u/s 471 of the Criminal Procedure Code against any of the parties concerned in the suit, without first holding an enquiry, and calling upon those parties to show cause why such proceedings should not be taken.

4. We think that this is clearly a mistake. If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury, or any other offence against public justice, he is justified in directing criminal proceedings against such persons u/s 471, without any further enquiry than that which he has already held in his own Court.

5. Mr. Justice MACPHERSON in that very case says distinctly, "If in the course of the civil trial the Judge has before him clear and unmistakable proof of a criminal offence, and if, after the trial is over, he on consideration, thinks it necessary to proceed at once, of course it may be right to do so."

6. There is, therefore, no ground, as far as we can see, for setting aside the proceedings in this case, upon the ground that the Judge should, before instituting them, have held any other enquiry than that which he had already held in the probate case.

7. At the same time we think that the Judge might well take warning from the very excellent advice which is given to Subordinate Courts by Mr. Justice MACPHEESON in the judgment which we have been quoting. We do not pretend of course to give any opinion as to the merits of this case, but it would certainly seem rather rash to institute criminal proceedings in case where the evidence is all one way, and where an appeal is now pending to this Court. We think that, as a matter of discretion and propriety, the Judge might have waited until the appeal had been heard before he ventured to commit the accused for perjury upon their own uncontradicted statements.