

(1881) 01 CAL CK 0005

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Shibo Behara

RESPONDENT

Date of Decision: Jan. 20, 1881

Acts Referred:

- Penal Code, 1860 (IPC) - Section 211

Citation: (1881) ILR (Cal) 584

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

Whether the Judge was right or not in postponing the trial after it had once begun, I think this Court has the power to quash an illegal commitment at any stage of a criminal proceeding.

2. In these two cases I am of opinion that the commitments should be set aside on the ground that the sanction for prosecution u/s 211 was illegally given. Whatever might have been said in *Nusibunnissa Bihee v. Sheikh Erad Ali* (4 C. L. R. 413) the later cases have distinctly laid it down that a sanction for prosecution u/s 211 given without hearing all the witnesses whom a complainant wishes to produce in Court, is illegal. In these cases, therefore, the original orders sanctioning prosecution u/s 211 are illegal. That being so, the commitments are also illegal. I would, therefore, set them aside as recommended by the Judge.

Maclean, J.

3. The principle involved in these cases is the same as that involved in the case of *Chukrodhur Pati* just disposed of; and as I am of opinion that any convictions had upon the trials under the commitments which we are asked to quash would be set aside, I think the simplest course is to set aside the proceedings at this stage.