
(1871) 03 CAL CK 0004

Calcutta High Court

Case No: Criminal Appeal No. 102 of 1871

Mahima Chandra
Chuckerbutty

APPELLANT

Vs

The Queen

RESPONDENT

Date of Decision: March 25, 1871

Judgement

Loch, J.

In a suit for arrears of rent for 1271--1273 (1864--1866) instituted before the Deputy Collector, Moulvie Dilwar Hossein Khan, by one Iswar Chandra Boy, the defendant, Mahima Chandra Chuckerbutty, pleaded payment, and filed six receipts. The case however was ultimately decreed in favor of the plaintiff. In that case there were three defendants, and no appeal was preferred from the decree passed by the Deputy Collector on the 17th June 1870. Subsequent to the making of that decree the plaintiff Iswar Chandra Boy applied to the Deputy Collector for permission to prosecute Guru Charan and Nabin Chandra criminally, and the Deputy Collector, on the 30th July 1870, made this order: The judgment shows that the dakhilas filed by the defendants are false. Sanction is therefore given to the petitioner to prosecute the defendants criminally." It is clear that this petition and its sanction related only to the parties mentioned therein, namely Guru Charan and Nabin Chandra. Subsequently on the 29th August 1870, Iswar Chandra Roy presented a second petition to the Collector, praying that he might be allowed to prosecute Guru Charan, Nabin Chandra, Mahima Chandra, the prisoner now before us, and others, and the Collector upon that petition made the following order:--

Sanction has already been given once by the Deputy Collector. I, however, have no objection to give it a second time, as the petitioner desires it. Sanction therefore is hereby given to the petitioner to institute a charge of forgery, & c.

2. This sanction is given u/s 170 of the Criminal Procedure Code. It is evident that this order relates to and confirms the sanction given by the Deputy Collector on the 30th July 1870, and goes no further. The Collector repeats the sanction already given by the Deputy Collector, and there is nothing to show that the Collector intended to extend it to

the other persons mentioned in the petition.

3. It has been urged before us that the error, if any, is one which can be cured by the terms of section 426 of the Criminal Procedure Code. The words of that section are to this effect. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or defect either in the charge or in the "proceedings on trial, unless the accused person shall have been sentenced to a larger amount of punishment than could be awarded for the offence," and so on. But the error in this case has been committed neither in the charge nor in the proceedings on trial. The error has been committed at the commencement, and no proceedings should have taken place previous to sanction being given.

4. It has been further contended that as this suit was for an amount of rent above Rs. 100, the Collector's Court was not the proper Court to which application should have been made for permission to prosecute the defendants criminally; and that the proper Court is the Judge's Court to which the appeal would lie. As we think however that no sanction has been given as regards the prisoner now before us, it is unnecessary for us to determine that point. The sanction given by the Sessions Judge, after the case had been committed, and the prisoner pleaded to the charge, and the trial had actually commenced, is clearly not a sanction contemplated by the law. Such being the case, we think that the proceedings taken against the prisoner before us must be quashed, and the prisoner discharged.