
(1880) 05 CAL CK 0011

Calcutta High Court

Case No: None

Noshai Mistri and
Ram Chunder Haldar

APPELLANT

Vs

The Empress

RESPONDENT

Date of Decision: May 13, 1880

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 122, 346
- Evidence Act, 1872 - Section 33

Citation: (1880) ILR (Cal) 958

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

Bench: Division Bench

Judgement

White, J.

We have now considered the cases of the prisoners Noshai Mistri and Ramchunder Haldar with reference to the ruling of the Full Bench in the case of Anuntram Singh (ante, p. 954), and are of opinion that the ruling in question has no application in the present case, but that the confessions are inadmissible for the following reasons:

2. They were in our opinion confessions recorded u/s 122 of the Code, and are defective from the omission of the Deputy Magistrate to record the certificate required by Section 346, Criminal Procedure Code, and the defect cannot be cured by taking evidence under the last clause of Section 346.

3. Independently of this objection, we think that, even if the defect could have been cured by taking evidence under that section, the Sessions Judge had no evidence on the point before him on which he could act, for the last clause of Section 346 directs that the Court of Session shall take the evidence. In this case, the committing Magistrate took the deposition of the recording Magistrate which he appears to have had no authority to do. Furthermore, we think that if the committing Magistrate had power to take the recording Magistrate's evidence, the Sessions

Judge has not shown that that Magistrate"s deposition was properly admitted under the provisions of the 33rd section of the Evidence Act, 1872. There is nothing on the record to show that the presence of the recording Magistrate could not have been obtained without an amount of delay or expense which in the opinion of the Court was unreasonable.

4. We accordingly set aside the conviction and sentence, and direct the discharge of the appellants Noshai Mistri and Ramchunder Haldar.