
(1871) 08 CAL CK 0004

Calcutta High Court

Case No: Miscellaneous Criminal Case No. 94 of 1871

The Queen

APPELLANT

Vs

Girish Chandra Ghose
and Others

RESPONDENT

Date of Decision: Aug. 7, 1871

Judgement

Glover, J.

We are very unwilling to interfere with the orders passed in the Courts below, because the investigation appears to have been very carefully and thoroughly made, and the evidence is full and satisfactory. There can, however, be no doubt that the Magistrate has, in more than one particular, contravened the provisions of the Code of Criminal Procedure, and we have no choice but to quash his proceedings as illegal. In the first place he did not record the complainant's statement before referring the case to the Deputy Magistrate, as he was bound to do u/s 66 of the Code. There is an order on the back of the petition making over the case, but no examination of the complainant reduced into writing, and signed by the complainant and the Magistrate." In the cases of [Dulali Bewa Vs. Bhuban Shaha and Others](#) and of The Queen v. Mahim Chandra Chuckerbutty Id., 67, it has been decided that such a departure from the rules of Procedure makes the acts of a Magistrate illegal.

2. The appellant further contends that the Magistrate, having once made over the case to the Deputy, could not try it himself, without formally recalling the case from the lower Court u/s 36. The point has been ruled in [Shanto Teorni Vs. Mrs. Belilias and Others](#) , and should, I think, be given in favor of the appellant in this case.

3. There are other questions of law raised; one that, as regards Roshan Ali, part at least of the evidence against him was not recorded in his presence; another, that several witnesses whom the accused wished to call were not summoned. "We do not see anything on the record that would substantiate the last objection; and had it been a true one, it would have been made, we should suppose, to the Judge when the appeal was before him. The first is however at least partly correct, as the record itself shows. As

however it appears that the conviction must be quashed on the two first objections taken, it will be unnecessary to further enquire as to the second. The appellants must be discharged.

¹ Act XX V of 1861, section 66.--When in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made before the Magistrate of the district, or a Magistrate who is authorized to receive such complaint, without reference from the Magistrate of the district, such Magistrate shall examine the complainant. The examination shall be reduced into writing, and shall be signed by the complainant and also by the Magistrate.

² Act VIII of 1859, section 36--The Magistrate of the district, or a Magistrate in charge of a division of a district, may respectively withdraw any criminal case from any Court subordinate to him, and may enquire into or try the case himself, or refer it for enquiry or trial to any other such Court competent to enquire into or try the same.