

(1914) 08 CAL CK 0020**Calcutta High Court****Case No:** Ref. No. 145 of 1914

The Emperor

APPELLANT

Vs

Raffi Raut and Others

RESPONDENT

Date of Decision: Aug. 11, 1914**Judgement**

1. This is a reference made by the Sessions Judge of Darbhanga under sec. 438, Cr. P.C. It appears that on the 8th April 1914, the Petitioners presented a petition to the Sub-Divisional Magistrate of Samastipur complaining against 9 persons who are servants of the Birauli Factory. In the concluding portion of their petition the Petitioners prayed for proceedings against these 9 persons under secs. 144 and 107, Cr. P.C. The substance of the petition was that these 9 persons had criminally intimidated the Petitioners, assaulted them and attempted to wrongfully confine them. On the filing of this petition, the Sub-Divisional Magistrate passed the following order "To Mr. Wylde of Birauli Factory, Please report on the circumstances of this petition. Put up on 25th April 1914." This order is open to great objection. It was Birauli people who were the accused. Mr. Wylde, the Manager of the Birauli Factory, therefore an interested party, ought not to have been asked to make a report in these judicial proceedings. On the 20th of April a report was received and thereupon the Petitioners were called upon to show cause why they should not be prosecuted under sec. 182, I.P.C. On the 25th of May, four witnesses were examined for the Petitioners and two witnesses for the other side; then on the 26th of May an order under sec. 476, Cr. P. C., was made directing that action should be taken against the Petitioners under sec. 182, I.P.C. We are of opinion that the order, dated the 20th of April 1914, and that, dated the 26th of May 1914, should be set aside. We are further of opinion that sufficient enquiry has not been made into the complaint made by the Petitioners. There should be further enquiry into the truth of the statements made by them in their petition. We may here suggest that a local enquiry is desirable in this case. It may be made by the Sub-Divisional Magistrate himself, or he may depute a Subordinate Magistrate for this purpose. It appears that the Petitioners complain that although some witnesses on their side were

examined, they themselves have not been examined. They should be examined if they choose to give evidence. We accept the reference, set aside the orders above referred to, and send back the case for further enquiry.