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(1913) 05 CAL CK 0027

Calcutta High Court

Case No: Rev. No. 404 of 1913

Anukul Chandra Roy

APPELLANT

Vs

Kamarali Sardar

RESPONDENT

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**Date of Decision:** May 8, 1913

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### Judgement

1. This was a Rule calling upon the District Magistrate of Nadia as well as the Opposite Party to show cause why the decision of the learned Sessions Judge should not be set aside on the ground that it was passed without jurisdiction and why the order of the Honorary Magistrate should not be set aside on the ground that Act XIII of 1859 does not apply to the accused. The accused in this case has been ordered under sec. 2 of Act XIII of 1859 to perform a certain contract that he entered into as a workman. All that we have got to see in connection with this case is whether the accused is a workman or not. The evidence is clear that he is a workman. In fact the contract was given to him on the basis of his being a workman and he engaged to do the work himself and to get it done by others, and in consideration of his agreeing to do this he received from the Petitioner's master large sums of money aggregating to over Rs. 8,000. A certain portion of the work has been done and Rs. 2,078 is yet due for which work has to be rendered. The accused has refused to do any more work and hence the order passed by the Honorary Magistrate in this case. Against that order the accused appealed to the Judge who has set aside the order of the Honorary Magistrate on the ground that the Act does not apply to the accused along with some other grounds. We see that in this case no appeal lay to the Judge. The order passed by the Magistrate does not come under the provisions of sec. 408 to make it appealable to the Judge. We therefore set aside the order of the learned Judge purporting to have been passed in appeal. That order being vacated, the order of the Honorary Magistrate will remain.

2. But we notice that the learned Magistrate has erred in directing the accused to suffer imprisonment for three months. That order could be passed under sec. 2 after there is a noncompliance with the order of re-payment or carrying out the contract. We therefore make the rule absolute in respect of the first part of the Rule and discharge the Rule in

respect of the second portion.