

(1903) 08 CAL CK 0011

Calcutta High Court

Case No: Rev. No. 674 of 1903

Kishore Sirkar

APPELLANT

Vs

King-Emperor

RESPONDENT

Date of Decision: Aug. 18, 1903

Judgement

1. This is a rule calling upon the Magistrate of the District to show cause why the order, under sec. 106 of the Code of Criminal Procedure in this case, should not be set aside on the ground that the conviction was not for an offence referred to or contemplated in that section. No one appears to show cause, but the learned District Magistrate has submitted a written explanation in which he refers to the case of Queen v. Jhapoo and others 20 W. R. Cr. 37 (1873), in support of the order under sec. 106 of the Code of Criminal Procedure, That case has been considered in later cases, and the weight of authority in this Court is clearly in favour of the view that a conviction under sec. 143 or 379 of the Indian Penal Code is not of itself sufficient to sustain an order under sec. 106 of the Code of Criminal Procedure, although such conviction coupled with findings bringing the case within the scope of sec. 106 may sustain an order under that section ; but in such a case those findings must be clear and explicit ; and, moreover, if the finding be that the accused was guilty of the offence of criminal intimidation, there, as the section expressly requires, the conviction must also be for the offence of criminal intimidation in order to sustain an order under sec. 106. In the present case those requirements have not been satisfied. The view we take is in accordance with that taken by this Court in the cases of In the matter of Ram Charan Maitie 1 C. W. N. 186 (1896), Jib Lal Gir v. Jagmohan Gir I. L. R. 23 Cal. 576 (1899), and Sheobhajan Singh v. S. A. Mosawi I. L. R. 27 Cal. 983 (1900). The order complained of must therefore be set aside.