

(1925) 05 CAL CK 0045**Calcutta High Court****Case No:** None

Srimati Jamila Khatun and
Others

APPELLANT**Vs**

Gour Mohan Dutta

RESPONDENT**Date of Decision:** May 4, 1925**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 47

Citation: AIR 1926 Cal 979 : 91 Ind. Cas. 675**Hon'ble Judges:** Pearson, J; Babington Newbould, J**Bench:** Division Bench

Judgement

1. This is an appeal against the order of the District Judge of Noakhali affirming the order of the Munsif, First Court, Noakhali, dismissing an application u/s 47 of the C.P.C. The petitioner who is the appellant was examined on commission from 9-30 A.M. till 1 P.M. She then refused to answer any more question put to them in cross-examination on the ground that her head was puzzled. The commission then closed the examination and submitted his report and the Munsif held that she deserved exemplary punishment as a witness for her conduct and thought that the mere discarding of her evidence would be sufficient punishment. The learned District Judge has held and we agree with him that this order of the Munsif was wrong and the evidence should not have been discarded. He has held, however, that the Munsif was right in rejecting the application on account of what subsequently happened. At a subsequent date when the case came up for hearing the petitioner had some witnesses present but declined to examine them. The learned District Judge is of the opinion that had the evidence of the witnesses present been taken they might have established her case and that she should have examined these witnesses before appealing on the ground that her own deposition was wrongly excluded.

2. We are unable to agree with this view of the learned District Judge. When her own evidence, which was presumably the most important evidence on her behalf, was discarded it may well have been useless for her to proceed with the examination of the other witnesses. The only way by which she could get the wrong order rejecting her deposition set aside was by appealing against the order rejecting her application and she was well advised to have such an order passed as soon as possible.

3. We accordingly allow this appeal. We, set aside the order of the District Judge and also the order of the Munsif rejecting the petitioner's application and the order of the Munsif dated the 6th December 1922, discarding the petitioner's evidence and, direct that further enquiry be made into the matter.

4. The appellant will get her costs in this and in the lower Appellate Court. We assess the hearing fee at 2 gold mohurs.