

(1869) 10 CAL CK 0003

Calcutta High Court

Case No: None

Jagabandhu Myti

APPELLANT

Vs

Gobardhan Bera

RESPONDENT

Date of Decision: Oct. 4, 1869

Judgement

Norman, J.

This case is referred to this Court u/s 434 of the Code of Criminal Procedure by the Sessions Judge of Midnapore. It appears that Jagabundbu Myti, the servant of Abhai Narayan Bhuah Das Mahapattar, sent a sloop loaded with a cargo of 1,000 maunds of paddy from Balsar to Calcutta. The sloop, with which were two small dinghis, and the cargo were in charge of Gobardhan Bera, Manji, Puddo Lochan Bara, Dari, and Shobba Dass, Churandar. The sloop was wrecked in a storm on the Rangafullah sands, and a considerable portion of the paddy floated out. The wreck of the sloop with the boats and the paddy which remained were sold by the persons above named to one Raj Narayan.

2. The Deputy Magistrate of Cantai, Munshi Dabiruddin Ahmed, after taking the evidence of the complainant and certain witnesses called by the complainant, and examining the accused, for reasons which we concur with the Judge in thinking wholly insufficient, discharged the accused persons.

3. On looking through the papers in the record, it appears that though the nature of the charge was explained to the accused, no formal charge in writing was drawn up against the accused persons, in the manner required by the 250th section of the Code of Criminal Procedure. They were not required to plead guilty or not guilty, or to make their defence to any charge as required by the 251st section. They were not tried by the Magistrate on any such charge, and therefore the order for their release by the Magistrate, does not amount to an acquittal under the 255th section, but simply to discharge under the 250th section.

4. Under such circumstances it appears to us, that the Sessions Judge-is competent, under the power vested in him by section 435 of Act VIII of 1869, by which section

435 of the Code of Criminal Procedure is amended, to direct the committal of such of the accused as he may think ought to be tried notwithstanding that they have been discharged, as to which he must exercise his own judgment. With these observations we send back the case for disposal to the Judge.