

**(1916) 05 CAL CK 0041**

**Calcutta High Court**

**Case No:** None

Kamal Mandal and Another

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** May 12, 1916

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 35(1)

**Citation:** 38 Ind. Cas. 970

**Hon'ble Judges:** Sheepshanks, J; Asutosh Mookerjee, J

**Bench:** Division Bench

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### **Judgement**

1. These are references u/s (sic) (1), Criminal Procedure Code, made by the District Magistrate of Jessore. The facts are not in dispute and may be briefly stated. On the night of 10th October 1915, a burglary with theft was committed in the house of one Bijoy1a1 Ghosh of Raigram. On the 12th December 1915, another burglary with theft was committed in the house of one Bijoygopal Roy of the same village. In the course of the investigation in the second case the Police discovered the stolen articles of Bijoylal Ghosh as also those of Bijoygopal Roy from the huts and from underneath a heap of straw in the courtyard of the two accused, Kamal Mandal and his son Purna Mandal. Two separate cases were thereupon instituted against both the accused, one in respect of each incident. The trials were separately held and separate judgments were delivered. The Sub-Deputy Magistrate sentenced each accused to undergo rigorous imprisonment for six months in each case and he ordered that the sentences in the two cases should run concurrently. Appeals were preferred to the District Magistrate as the trials had been held by a Sub-Deputy Magistrate of the second class. The appeals were summarily rejected. It was subsequently brought to the notice of the District Magistrate that the order that the sentences in the two cases should run concurrently was irregular under Jail Code, Rule 526, Explanation 1. An explanation was called for from the Sub-Deputy Magistrate, who stated that his intention was that each accused should in all

undergo rigorous imprisonment for six months, taking together the sentences in both the cases. The District Magistrate has now referred the case to this Court, with the recommendation that the sentence in each case be reduced to rigorous imprisonment for three months and the two sentences be ordered to run consecutively or that a fresh trial be directed.

2. It is obvious that the order of the Sub-Deputy Magistrate that the sentences in the two cases do run concurrently is illegal. Section 35(1), Criminal Procedure Code, authorises a Court to direct that several punishments passed on an accused for two or more distinct offences do run concurrently only when such sentences have been passed on him at one trial. It is not competent to a Court to give such a direction when the sentences have been passed in different trials (Section 397 of Criminal Procedure Code) [Queen-Empress v. Bhagwandas 2 Bom. L.R. 111, Emperor v. Tukaram Hari 4 Bom. L.R. 876, Girdhari Lal v. Emperor 10 Ind. Cas. 156 : 12 Cri. L.J. 217 : 11 P.R. 1911 Cr. 32 P.W.R. 1911 Cr. : 146 P.L.R. 1911]. It may be pointed out that u/s 46 of Act XXV of 1861 such a direction could have been given when the accused was convicted of more than one offence at one time; in Section 314 of Act X of 1872 the phrase "at one trial" was substituted for "at one time" and any possible ambiguity in the section due to the use of the latter phrase was thus removed: Queen-Queen v. Puban 7 W.R. 1 Cr. We accordingly accept the recommendation of the District Magistrate, reduce the sentence upon each accused in each case to rigorous imprisonment for three months and direct that the sentences in the two cases do run consecutively.