

**(1913) 11 CAL CK 0013**

**Calcutta High Court**

**Case No:** Rev. No. 1645 of 1913

Ulfat Shaikh and Others

APPELLANT

Vs

The King-Emperor

RESPONDENT

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**Date of Decision:** Nov. 21, 1913

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### **Judgement**

1. The Petitioners were tried by a Bench consisting of two Honorary Magistrates. At the conclusion of the trial the Chairman recorded a judgment of conviction and his colleague a judgment of acquittal. The Magistrates took the view that in these circumstances the Chairman had a casting vote. The trial thus resulted in a conviction. The appeal to the District Magistrate was dismissed. The Code of Criminal Procedure enables the Local Government to make rules respecting the mode of settling differences of opinion which may arise between the members of a Bench of Magistrates. In exercise of this power the Government of Bengal issued a notification in 1906, directing that in the event of a disagreement the case shall be referred back to the District Magistrate or Sub-Divisional Officer as the case may be. The Rule was issued in the present case upon the ground that the direction contained in the notification had been contravened.

2. The case, however, comes from the District of Faridpur. That District was not within the limits of the Government of Bengal in the year 1906, and we have not been able to find any provision under which we can hold that the application of the notification of 1906 was extended when the territorial limits of the Government of Bengal were extended in 1912. We must hold therefore that the notification does not apply.

3. It has however been contended that there is at the present time no rule in force in the District of Faridpur providing for the settlement of a difference of opinion between the members of a Bench of Honorary Magistrates. To deal clearly with the contention it will be necessary to shortly relate the history of the matter so far as the District of Faridpur is concerned. Prior to 1905, the District was within the territorial limits of the former Province of Bengal. During that period a notification was in force

under which a difference of opinion between two members of a Bench was to be settled as it was in fact settled in the present case, by the casting vote of the Chairman. In 1905, a new Province, the Province of Eastern Bengal and Assam, was created and the District of Faridpur was declared to be within the limits of the new Province. The District thus ceased to belong to the Province of Bengal, but by the provisions of Act VII of 1905, the old notification on the present subject as well as all other notifications of the then Government of Bengal were retained in force. In 1912, the Province of Eastern Bengal and Assam was brought to an end with the result that the District of Faridpur found itself within the territorial limits of the new Presidency of Bengal.

4. The contention is that when the Province of Eastern Bengal and Assam came to an end and the Act of 1905 was repealed in 1912, the old notification of the former Province of Bengal referred to which, between 1905 and 1912, derived its force in the District of Faridpur by reason of the Act of 1905, also came to an end, and the notification of 1906, having no application, as we have seen, to Faridpur, it is contended that the result was that there is no rule on the subject in force in Faridpur.

5. The contention cannot in our opinion prevail. Sec. 3 of Act VII of 1912 provided that all notifications in force in Faridpur (as in other parts of the former Province of Eastern Bengal and Assam) should be construed as if they had been issued by the new Governor-in-Council of Bengal. This is the meaning we attach to the section. It would be contrary to principle to hold that the general terms of the subsequent sec. 8 of Act VII of 1912, repealing Act VII of 1905, limited the application of the special provisions of the former sec. 3. It is not possible to hold that the intention of the Legislature was that the provisions of sec. 3 should not apply to notifications which derived their force in the former Province of Eastern Bengal and Assam from the Act of 1905.

6. We must therefore hold that in the District of Faridpur the old notification is still in force, under which a difference of opinion between two Honorary Magistrates forming a Bench is to be settled by the casting vote of one of them, namely, the Chairman.

7. This Rule came before a Full Bench of this Court in 1906. The Chief Justice in the case of *Emperor v. Kali Prosanna* 10 C. W. N. 642 (1906) then stated that the rule was "very unsatisfactory and equally undesirable." Similar opinions were expressed by Ghose, J., Rampini, J., Sale, J., and Pratt, J. We desire to express our concurrence and to add that we would be glad to see the new rule issued in 1906 extended to the Districts of Eastern Bengal both upon principle and with a view to uniformity. We have been asked to set aside the convictions upon the ground that in view of the difference of opinion between the two Magistrates the District Magistrate should have acquitted in appeal. We are not able however to lay down any such general rule though no doubt the fact that one of the two trying Magistrates was in favour

of acquittal was a very important factor calling for careful consideration. The Rule is discharged so far as the convictions are concerned. We do not interfere with the sentences passed upon the Petitioners Nos. 3 and 5, Lebu Sheikh and Khader Sarip. In the case of the other Petitioners we reduce the sentences of imprisonment to the periods already undergone. The sentence of fine and of imprisonment in default will in each case stand.