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**(1928) 12 CAL CK 0026**

**Calcutta High Court**

**Case No:** None

Dabiruddi Naskar

APPELLANT

Vs

Sakat Molla

RESPONDENT

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**Date of Decision:** Dec. 19, 1928

**Citation:** 116 Ind. Cas. 164

**Hon'ble Judges:** Mukerji, J; Graham, J

**Bench:** Division Bench

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### **Judgement**

Mukerji, J.

This is a Reference made by the Additional Sessions Judge of 24-Parganas u/s 438, Criminal Procedure Code, recommending that an appellate order of acquittal passed by the Additional District Magistrate of that District should be set aside and the appeal ordered to be re-heard.

2. It has been laid down in a long series of cases what should be the guiding principle to be acted upon by the High Courts in dealing with applications for revision of orders of acquittal. The principle has been very clearly laid down by Jenkins, C. J., upon a review of the practice in almost all the High Courts in India, in the case of Faujdar Thakur v. Kasi Choudhuri 27 Cas. 186 : 42 C. 612 : 19 C.W.N. 184 : 21 C.L.J. 53 : 16. L.J. 122. He observed: "The pronouncements of the High Courts of Madras, Bombay and Allahabad consistently support the view that, as a general rule, it is expedient not to interfere on revision, at the instance of a private person, with an acquittal after trial by a proper Tribunal, and that applications for that purpose should be discouraged on public grounds". He further observed: "I am not prepared to say, the Court has no jurisdiction to interfere on revision with an acquittal, but I hold it should ordinarily exercise that jurisdiction sparingly and only where it is urgently demanded in the interests of public justice." Since this proposition was laid down by that learned Chief Justice it has, I find, been followed by all the High Courts, e.g. Pramatha Nath Barat v. P.C. Lahri 59 Ind. Cas. 37 : 47 C. 818 : 22 Cr. L.J. 5 In re Fareedoon Cowasji Parbhu 40 Ind. Cas. 316 : 41 B. 560 : 19

Bom. L.R. 354 : 18 Cr. L.J. 668 [A.T. Sankaralinga Mudaliar Vs. Narayana Mudaliar and Others,](#) , [Siban Rai Vs. Bhagwant Dass and Another,](#) Reference u/s 438, Criminal Procedure Code, recommending revision of orders of acquittal, in my opinion, stands on no higher footing than applications of private prosecutors for such revision. In the case of Hrishi Kesh Mandal v. Abadhaut Mandal 38 Ind. Cas. 421 : 44 C. 703 : 21 C.W.N. 250 : 18 Cr. L.J. 309 it was said by this Court that in the case of an acquittal when the Local Government has not preferred an appeal u/s 417, Criminal Procedure Code, the High Court ought not to interfere in revision, on a reference u/s 438 where it cannot do so without practically hearing the case on the evidence as an appeal in order to satisfy itself that the opinion of the referring Court is correct, though it has jurisdiction to intervene in such cases. It is true that in a few instances there has recently been some departure from the practice intended to be laid down in the aforesaid decisions of this Court, but on an examination of the papers of such of the cases as are available it appears that either the Reference was not opposed, or that the acquittal was not on the merits or was based on a palpable error of law. The present reference is entirely on the merits, the Additional Sessions Judge having been inclined to take a view of the evidence different from that of the Additional District Magistrate. That this is a very reasonable and convenient practice is clear from the fact that our High Courts have also set their face against references of this character: In the matter of Sheikh Amin-ud-Din 24 A. 346 : A.W.N. (1902) 89 Emperor v. Madar Bakhsh 25 A. 128: A.W.N. (1902) 200 In re Sinnu Goundan 23 Ind. Cas. 188 : 38 M. 1028 : 26 M.L.J. 160 : (1914) M.W.N. 273 : 15 Cr. L.J. 236 Emperor v. Achhar Singh 5 Lah. 16: AIR 1924 Lah. 451 : 25 Cr. L.J. 931.

3. In my opinion this reference should not be entertained and I would accordingly discharge it.

Graham, J.

4. I agree.