

(1920) 12 CAL CK 0017

Calcutta High Court

Case No: None

Lakshman Chandra Ghose

APPELLANT

Vs

Bilash Roy Agarwala and Others

RESPONDENT

Date of Decision: Dec. 10, 1920**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 133, 438

Citation: 61 Ind. Cas. 175**Hon'ble Judges:** Ghose, J; Beachcroft, J**Bench:** Division Bench

Judgement

1. This is a Reference u/s 438, Criminal Procedure Code, by the Sessions Judge of Nadia, recommending that the order passed by the Sub-Divisional Officer of Kushtia, which made an order u/s 133, Criminal Procedure Code, absolute, should be set aside. It appears that, when the present petitioners were called upon to show cause, they put in a petition in which they stated that the path which they were alleged to have obstructed was not a public path, and that proceeding ought not to be taken u/s 133, Criminal Procedure Code, and they asked for the appointment of a Jury. The learned Judge has recommended that the order should be set aside on the ground that it was for the Magistrate to decide whether the path in question was a public or a private one, and also whether the petitioners had any bona fide claim of right to the path. In so far as the learned Judge is of opinion that it was for the Magistrate to decide whether the path in question was a public or a private one, we are unable to agree with him. The proper procedure to be adopted in cases coming under Chapter X of the Code is explained in the leading case at *Luckhee Narain Banerjee v. Ram Kumar Mukherjee* 15 C. 564 : 7 Ind. Dec. (N.S.) 960 where it was pointed out that, when a claim is made that the path is a private one, the Magistrate must first enquire whether the claim is a bona fide claim or not and it is only if he finds that the claim is not a bona fide one that he should take further proceedings under the Chapter. If he is of opinion that the claim is bona fide he should leave the parties to

take further proceeding in the Civil Court. And it is also pointed out in the same case that, if the parties do not go to the Civil Court within reasonable time, then the Magistrate may proceed again. This case has been followed in several subsequent cases in this Court; for instance, the cases of Matuk Dhari Teuiari v. Hari Madhab Das 31 C. 979 : 9 C.W.N. 72 : 2 Cr. L.J. 11 Nataruddi v. Akiluddi 3 C.W.N. 345 and Dulalram Deb v. Baishnab Charan Deb. 10 C.W.N. 845 : 4 Cr. L.J. 42 The Magistrate has submitted an explanation in which he states that the petitioners did not claim the path was a private one. In terms that may be Correct; but it is obvious that the petitioners intended to set up such a claim when they denied that the path was a public one. In the circumstances, we think that this Reference ought to be accepted and all proceeding subsequent to the 14th of June set aside. The order for the appointment of a Jury must be set aside, until the Magistrate has satisfied himself as to whether the claim is a bona fide one or not. He must then proceed in accordance with the procedure which has been explained in the case of Luckhee Narain Banerjee v. Ram Kumar Mukherjee 15 C. 564 : 7 Ind. Dec. (N.S.) 960, to which we have already referred.