

(1911) 04 CAL CK 0018

Calcutta High Court

Case No: Rev. No. 287 of 1911

Bansi Singh and others

APPELLANT

Vs

Sayad Mohamed Akbar Ali Khan
alias Chhota Nawab

RESPONDENT

Date of Decision: April 20, 1911

Judgement

1. This was a Rule calling on the District Magistrate of Gaya to show cause why the order for costs should not be set aside on the ground that no order was passed referring to costs at the time the judgment in the original case was delivered. We have already decided in another case that the dictum in Benoda Sundati Chowdhurani v. Kali Krishto Paul Chowdhry ILR 22 Cal. 387 (1895) that the award of costs under sec. 148, Cr. P.C. is a quasi civil proceeding and the rule laid down by sec. 218, C.P.C., should prevail, was nothing more than an expression of opinion of the learned Judges as to the practice which should prevail in these cases, and we entirely agree in that expression of opinion; but in the case in which that opinion was expressed as a matter of fact no costs were ordered at the time the judgment was delivered. No application for costs was made until two days after, and in a later case, Queen-Empress v. Tomijuddi ILR 24 Cal. 757 (1897), the order was not made till three months after. In that case the same opinion is expressed that the order for assessment of costs under sec. 148 should be made at the time of passing the decision. But the case itself turns solely on the ground that the order was made ex parte, and the rule is laid down that the intention of sec. 148 would seem to be that an order for assessment of costs should be made at the time in the presence of the parties. Now it has been laid down over and over again that the assessment of costs must in many cases take a considerable time. As long as the order is passed within a reasonable time the enquiry into the amount of costs due may be protracted as long as it is necessary. The meaning of this rule therefore must be that "at the time" means while the same Magistrate is sitting and the parties are able to appear before him. In the case of Benoda Sundaii Chowdhurani v. Kali Krishto Paul Chowdhry ILR 22 Cal. 387 (1895) there was an interval of two days. In the present case there was

an interval of seven. The bill of costs which was very long consisted of many items and we do not think that there was an unreasonable delay. The other side was called upon to show cause and the costs were diminished by omitting such charges as had been incurred prior to the issue of the proceeding under sec. 145. The costs which have been allowed all fall within the scope of the section and we are not concerned in any way whether they are excessive or deficient. If they are within the scope of the section the Magistrate had full jurisdiction to pass the order.

2. For all these reasons we discharge this Rule.