

Bansi Singh and others Vs Sayad Mohamed Akbar Ali Khan alias Chhota Nawab

Court: Calcutta High Court

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.