

(1918) 01 CAL CK 0053

Calcutta High Court

Case No: None

Chand Tarafdar

APPELLANT

Vs

Shamsher Fakir

RESPONDENT

Date of Decision: Jan. 28, 1918**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 16, 350
- Penal Code, 1860 (IPC) - Section 147, 324

Citation: 44 Ind. Cas. 328**Hon'ble Judges:** Walmsley, J; Chitty, J**Bench:** Division Bench

Judgement

1. In this case the petitioner Chand Tarafdar was charged under Sections 147 and 324 of the Indian Penal Code before a Bench of two Honorary Magistrates exercising 3rd Class powers. The two Magistrates differed in opinion and the case was under Rule 6 referred back to the Sub-Divisional Magistrate. He did not try the case de novo but heard arguments and passed judgment convicting the accused under Sections 147 and 324, Indian Penal Code, and sentencing him to six months' rigorous imprisonment. The accused appealed and his appeal was heard by the 2nd Additional Sessions Judge of Mymensingh. He held, on the authority of Ulfat Sheikh v. Emperor 21 Ind.Cas. 1004 : 18 C.W.N. 394 : 19 C.L.J. 92 : 14 Cri. L.J. 684 that the Sub-Divisional Magistrate had no jurisdiction, and that the case should have been decided by the casting vote of the Chairman of the Bench of Honorary Magistrates, though at the same time he pointed out that no Chairman appeared to have been chosen. He accordingly set aside the conviction and sentence and remanded the case for re-trial by a Stipendiary Magistrate. Against that order the accused applied for and obtained this Rule. We must at once point out that the learned Judge was in error in supposing that the old Rule 6 of the Rules framed by the Local Government u/s 16, Criminal Procedure Code, was still in force in Mymensingh. The new Rule 6, which provides that in case of a difference of opinion between an even number of

Magistrates the case shall be referred back to the District Magistrate or Sub Divisional Officer, has been made applicable to the whole of the Presidency of Bengal, as now constituted, by Government Notification 950-A, dated 30th January 1914 The Sub-Divisional Officer had, therefore, jurisdiction to deal with the case. The difficulty, however, does not end there. It is not quite clear what is meant by the concluding words of Rule 6, "the case shall be referred back to the District Magistrate or the Sub-Divisional Officer, as the case may be." Does it mean that he is merely to hear arguments and record his opinion, as was done in this case, or is he to try the case again de novo? Though the word "back" might be taken to indicate that the case was to be sent back as an untried case, we do not think that this is the only possible interpretation. In any case we see no reason why the provisions of Section 350, Criminal Procedure Code, should not apply to this case. Here the accused did not demand a de novo trial before the Sub-Divisional Officer: nor does he now express any such desire. On the contrary he begs that he may not be tried all over again, but that his appeal may be heard on the merits. To this the complainant, whose Pleader we permitted to address us on the point, has no objection. We accordingly make the Rule absolute, set aside the order of the 2nd Additional Sessions Judge and direct that the appeal be heard on its merits. The accused may remain on bail pending the hearing of the appeal.