(1924) 08 CAL CK 0039

Calcutta High Court

Case No: None

Mahmad Yasin		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Aug. 14, 1924

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 197

Citation: (1925) ILR (Cal) 431

Hon'ble Judges: Walmsley, J; Mukerji, J

Bench: Division Bench

Judgement

Walmsley, J.

The appellant was the chairman of the Union Committee at Chatmohar in the district of Pabna, and he has been convicted under Sections 218, 409 and 477 of the Indian Penal Code. A concurrent sentence of three months has been passed under each of the Sections 218 and 409 of the Indian Penal Code. There was also fine imposed u/s 409 of the Indian Penal Code, and no sentence was passed separately on the accused u/s 477 of the Indian Penal Code.

2. The first point which is urged on behalf of the appellant is that the proceedings were bad because there was no sanction given by the Local Government, as required by Section 197 of the Criminal Procedure Code. I do not think there is any substance in this objection, because it appears that member of the Union Committee can be removed under certain circumstances by Commissioner. So that it cannot be said of him that he is not removable from his office save by the Local Government.

3. The second objection is that there was no compliance with the provisions of Section 360 of the Criminal Procedure Code, regarding the depositions of several of the witnesses. Reference is particularly made to prosecution witnesses Nos. 1, 3, 8, 9, 10, 13, 14, 15, 16, 17 and 19. Reliance is placed upon the recent decision in the

case of Hira Lal Ghose v. Emperor I. L. R. (1924) Cal 159, and it is urged that, in accordance with the decision, the evidence of these witnesses cannot be treated evidence on which conviction can be founded. There is affidavit to the effect that there was not strict compliance with the law in reading over the evidence given by these witnesses. On the other hand, there is letter from the Sessions Judge sending up report of the learned pleader who conducted the prosecution. The statements m de by that pleader seem to me to support the case of the appellant, because it is evident that the pleader failed to understand the true nature of the requirements of Section 360. As I understand that section, both the witnesses whose statements have been recorded and the accused who is on trial are to be given an opportunity of knowing what has been recorded, and obviously mere reading over of the evidence by the witnesses cannot convey to the accused what has been recorded as the evidence given by the witnesses. It appears to me, therefore, that we must hold that the evidence was not duly recorded as required by Section 360, and cannot, therefore, be used as the foundation of conviction. The result is that the findings and sentences in this case must be set side, and the case committed to the Sessions Court, where it will be open to the authorities, if they think proper, to proceed against the accused de novo. The appellant, we are told, is on bail. He may remain on that bail pending further orders by the District Magistrate.
Mukerji J.

4. I agree.