

(1879) 05 CAL CK 0011

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Chunder Nath Dutt

RESPONDENT

Date of Decision: May 14, 1879

Citation: (1880) ILR (Cal) 121

Hon'ble Judges: White, J; Morris, J

Bench: Division Bench

Judgement

White, J.

The question raised by the reference of the Officiating Chief Magistrate is as to the procedure to be adopted in cases under chap. 8 of the Presidency Magistrates' Act, when an accused person who has been discharged by the Magistrate u/s 87 of that Act, because there are no sufficient grounds for committing the prisoner to take his trial is at some subsequent time again prosecuted before a Magistrate for the same offence. The Act, in Section 82, states specifically the procedure to be applied when an accused person is brought before the Magistrate under chap. 8, and no distinction is made between the cases of a first and that of a second prosecution for the same offence. The argument that on a second prosecution the witnesses who were examined on the first prosecution need not be examined again, but may be considered as giving evidence in support of the second prosecution, is based solely and entirely upon the circumstance that the Legislature, in expl. 2 of Section 87, has described the second prosecution as the "revival of a prosecution." I think the argument is not sound, and has no sufficient foundation. The argument is in fact an inference from the use of the word "revival." The object of expl. 2 of Section 87 is to negative the supposition that a discharge would be a bar to a second prosecution for the same offence. The explanation does not deal with the procedure which is to be adopted, if such second prosecution should take place. The fact that the Legislature has described the second prosecution as the "revival of a prosecution," does not in my opinion warrant the inference either that the evidence upon which the first prosecution is based is also revived, or that the procedure upon the second

prosecution is to be different from that pointed out in Section 82. A further reason for this view is to be found in the provision for adjournment, which is contained in the same chapter of the Act, u/s 86 a Magistrate has large powers of adjourning an enquiry for reasonable cause, but no adjournment can be for longer than fifteen days at a time. If upon a second prosecution after a discharge, the Magistrate is to treat the evidence that was given in the first prosecution as evidence upon the second prosecution, or as it is called in the reference before us--" take up the case for the prosecution where it was left when the prisoner was discharged "--the Magistrate would in effect be acting as if he had adjourned the enquiry sine die, which he has no power to do. It cannot be supposed that the Legislature intended by the mere use of the words "revival of a prosecution" in expl. 2, Section 87, to give the Magistrate such a power, after it had carefully made provision by Section 82 against unlimited adjournments. In my opinion the proper reply to the question of the Officiating Chief Magistrate is, that a "revival of a prosecution" as mentioned in expl. 2 of Section 87 is not a continuation of the original prosecution from which the accused has been discharged; and that upon the revival of the prosecution, all the witnesses on whose evidence the prosecutor intends to rely as justifying the committal of the accused must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined de novo.