
(1872) 03 CAL CK 0005

Calcutta High Court

Case No: Miscellaneous Criminal Case, No. 68 of 1878

H.P. Caspersz

Vs

APPELLANT

RESPONDENT

Date of Decision: March 28, 1872

Judgement

Kemp, J.

The Judge did not think proper to order the commitment of the accused. There can be no doubt that, in this case, as the accused was not put on his defence, the order dismissing the case amounts only to a discharge of the accused, and that the Judge was competent under s. 435, if he thought proper, to order the commitment of the accused. Not having done so, and having acted under the alternative portion of s. 435, the Judge was bound to keep strictly within the terms of that section. Now the terms of that section, in as far as the alternative portion of it are concerned, are that, in the case of such offences,--that is to say, offences triable by the Court of Session, or by the Magistrate of the district, or by any officer exercising the full powers of a Magistrate,--the Court of Session may order an enquiry to be made into any case which the Magistrate or other officer exercising the powers of a Magistrate may have dismissed without enquiry. Now, in this case, can it be said that the complaint has been dismissed without enquiry? We think that the contention of the learned counsel in this case is correct. There can be no doubt that, not only has there been an enquiry in this case, but that there has been a most elaborate enquiry. Witnesses for the Coal Association have been examined, their account books have been produced, and the whole case has, in our opinion, been thoroughly enquired into, and prima facie the decision of the Deputy Magistrate appears to us, as far as we can judge of it from the evidence which he alludes to, a proper decision; but be that as it may, he has dismissed the case as against the accused after taking evidence and after due enquiry. We have not found any authority contrary to the learned Counsel's contention with the exception of a Criminal Letter 3 W.R., Cr. Let., 21. In that case the Sessions Judge appears to have doubted whether he could proceed under the latter portion of s. 435 in a case where some enquiry had been made, and the letter referred to informed him that he was in error in supposing that he could not proceed under that section, because the

words " without enquiry " mean without proper enquiry. We are not bound by this Criminal Letter; and, following the word of the law, we must hold that there has been an enquiry in this case; and it can hardly be said that the enquiry has not been a proper one. We, therefore, think that the order of the Judge ordering a further enquiry must be set aside.

Glover, J.

2. I wish to add one word (whilst entirely concur-ring in the order to be passed), to guard myself against giving any opinion as to the sufficiency or otherwise of the inquiry made by the Deputy Magistrate. We have had the evidence before us and the Judge, on the other hand, says that he considers the enquiry not to have been a proper or sufficient one. I wish to avoid pledging myself to any opinion as to the sufficiency of the enquiry. It is though for the purposes of this case that there was an enquiry.