
(1878) 07 CAL CK 0015

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Hary Doyal Karmokar

RESPONDENT

Date of Decision: July 3, 1878

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 296

Citation: (1879) ILR (Cal) 16

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

The Deputy Magistrate, Moulvie Abdool Guffoor, discharged the accused; but, on the application of the complainant, the District Magistrate has committed him to the Court of Session, notwithstanding that objection to his jurisdiction was raised. The Magistrate appears to have considered that he had jurisdiction, because, this being a case regarding an offence triable by the Court of Session as well as by a Magistrate, he could act under s.296 of the Code of Criminal Procedure.

2. The Sessions Judge has referred the case to have this commitment set aside as illegal.

3. The grounds on which the Magistrate held that he could re-open this case are bad, as it has been held that the term "Sessions case" in Section 296 means a case triable exclusively by the Court of Session. But we think that the commitment should be maintained on another ground.

4. The Deputy Magistrate discharged the accused without examining the principal witness in the case, the woman who was alone present in the house when it was robbed, because, as the Sessions Judge expresses it, "she was reported not overstrong in the head". The Deputy Magistrate's order was, therefore, bad; and

under the rule laid down in the case of *Empress v. Donnelly* ILR Cal. 405, the District Magistrate was competent to revive the proceedings, further evidence being available.

5. We, therefore, decline to interfere.