
(1870) 02 CAL CK 0032

Calcutta High Court

Case No: None

Queen

APPELLANT

Vs

Haridas Kundu and
Others

RESPONDENT

Date of Decision: Feb. 12, 1870

Judgement

Norman, J.

A bond having been registered on the 28th of January 1869, before the Sub-Registrar of Madaripore, purporting to have been executed by Kamalakant Guho, four months afterwards, viz., on the 28th of May, Kamalakant presented a petition to the Magistrate, stating that the document was a forgery, and praying for an investigation. On receiving this complaint, it would, no doubt, have been the proper course for the Sub-Registrar to have caused the complainant to proceed under the 66th section of the Code of Criminal Procedure, either before the Magistrate of the district, or before himself, if he is authorized to receive such complaints without reference from the Magistrate. However, he proceeded to investigate the allegation of Kamalakant, as Sub-Registrar; and after reference to the Registrar of Backergunge, drew up a rubakari, addressed to himself, as Deputy Magistrate, to whom he transferred the papers for judicial enquiry. This, again, was irregular. The sanction of the Registrar, u/s 95 of Act XX of 1866, is to a prosecution to be instituted by the Sub-Registrar for an offence under the Act. The Sub-Registrar did not prosecute, but took up the case as Magistrate. His next step was to issue summons against Umatara, the prisoners Radhanath Dey, Krishna Charan Banerjee, and three other persons. We think the proceeding can be sustained as one taken under the powers of section 68 of the Code of Criminal Procedure, it having been brought to the notice of the Magistrate, though by the irregular enquiry which had taken place before him, that an offence had been committed. Witnesses were examined on the 10th and 28th of September, and the 26th and 30th of October, and the 9th November, and the prisoners Radhanath Dey and Krishna Charan Banerjee committed for trial on the 10th November. That commitment appears to us to be regular, and there are no sufficient grounds for quashing it.

2. But, on the 9th of November, Haridas Kundu was examined as an accused person, and committed for trial on the following day, the 10th, no charge having been previously made against him. The witnesses upon whose evidence he was committed for trial were not apparently examined in his presence, nor had he any opportunity of cross-examining them. It is clear that there is nothing to justify the commitment of Haridas Kundu, which must, accordingly, be quashed.

3. We desire that Kamalakant Guho be informed that he must proceed in the usual way by a complaint before the Magistrate against Haridas. It will probably be desirable to stay the trial of the other prisoners until after Haridas shall have been committed, or discharged by the Magistrate, and if he is committed, that the Sessions Judge should try the cases of the three prisoners together.