

AIR 1931 Cal 416

Calcutta High Court

Case No: None

Shaikh Gafoor

APPELLANT

Vs

Mt. Hemanta Shashi
Debya

RESPONDENT

Date of Decision: July 29, 1930

Acts Referred:

- Contract Act, 1872 - Section 23
- Criminal Procedure Code, 1898 (CrPC) - Section 258
- Penal Code, 1860 (IPC) - Section 379

Citation: AIR 1931 Cal 416

Hon'ble Judges: Mallik, J

Bench: Division Bench

Judgement

Mallik, J.

This rule is directed against an order passed by the Small Cause Court Judge of Narayangunj on 6th January 1930 by which he gave a decree to the plaintiff opposite party in a suit brought against the petitioner for recovery of the money on a bond. The rule was issued on ground 1 only and that ground was that the trial Court ought to have held that an agreement to stifle prosecution and to compromise a noncompoundable offence is invalid and not enforceable at law. It appears that before the bond on which the suit was instituted there had been a criminal case brought by the plaintiff's Naib against the defendant u/s 379, I. P.C. and it appears also that after the execution of the bond there was an order recorded by the trying Magistrate to the effect that the accused (the petitioner in the present case) was acquitted u/s 258, Criminal P.C. In support of the rule, the learned advocate for the petitioner contended that the bond on which the plaintiff's claim was based and which embodied the agreement made by the defendant to pay to the plaintiff was void u/s 23, Contract Act, inasmuch as the consideration of the bond was of such a nature that it would defeat the provisions of law and is opposed to public policy. A perusal of the bond however would show that what the defendant by the bond agreed

to pay was only a civil liability and as I read the document no part of the consideration of the bond was the price for the withdrawal of the criminal prosecution. The statement made in the document would show that if the defendant had anything to pay for the dropping of the criminal prosecution, that amount had been paid in cash and what the defendant by the bond was agreeing to pay was only the civil liability on account of rents and bazar. I would therefore hold that the withdrawal of the criminal prosecution formed no part of the consideration of the bond and if the dropping of the criminal prosecution was no part of the consideration, Section 23, Contract Act, can have no application to the present case. I am unable therefore to interfere with the order passed by the learned Small Cause Court Judge. The rule is, accordingly, discharged with costs. Hearing fee two gold mohurs.