

**(1929) 07 CAL CK 0059****Calcutta High Court****Case No:** None

Sulav Chandra Das

APPELLANT

Vs

Prafulla Kumar Roy

RESPONDENT

**Date of Decision:** July 5, 1929**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 437
- Penal Code, 1860 (IPC) - Section 380

**Citation:** AIR 1929 Cal 755**Judgement**

1. This Rule is directed against an order of the District Magistrate of Goalpara, dated 12th February 1929, ordering further enquiry into the case in which the petitioner was charged u/s 380, I.P.C. The only ground that the Magistrate found for further enquiry is stated by him in these words:

With regard to the evidence, the contention that the learned Magistrate has taken an entirely wrong view of the evidence with the result that there has been a miscarriage of justice appears to be not without foundation. I consider it desirable in the interest of justice that the case should be further enquired into.

2. We have gone through the judgment of the trial Magistrate and find that the trial Magistrate has carefully scanned the evidence and come to the conclusion that the case against the accused is at least very doubtful. It is not necessary for us to discuss the evidence and the learned District Magistrate has not done so; but we are of opinion that the view taken by the trial Magistrate cannot be held to be unjustifiable. Though it may be conceded in view of the Full Bench decision in *Haridas Sanyal v. Saritulla* [1888] 15 Cal. 608 (F.B.), that a revising Court has jurisdiction to order a further enquiry on the same materials, a superior Court, as has been pointed out in [Abdul Rashid Sheikh and Others Vs. Momtaz Sheikh](#), should hesitate before exercising its powers u/s 437, Criminal P.C., to order further enquiry unless there are palpable errors in the decision of the lower Court. The District

Magistrate has not given any indication in his judgment that there have been such palpable errors in the judgment of the trial Magistrate as to justify him in holding it to be wrong. We think that this is a case in which further enquiry is not necessary. We accordingly make the rule absolute and set aside aside the order of the District Magistrate.