

**(1912) 10 BOM CK 0019****Bombay High Court****Case No:** None

In Re: Dnyanoba Pandurang  
Bamne

**APPELLANT**

Vs

**RESPONDENT****Date of Decision:** Oct. 10, 1912**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 133

**Citation:** 18 Ind. Cas. 410**Hon'ble Judges:** Rao, J; Batchelor, J**Bench:** Division Bench**Judgement**

1. We think that owing to the material irregularities which have occurred in the conduct of these proceedings, we must take the Rule absolute discharge the order made by the Sub-Divisional Magistrate on the 22nd December 1911. That order, as we read it, is based upon the report made by the Mamlatdar and second class Magistrate apparently in November 1911. Now this report of the second class Magistrate shows, we think, that he misapprehended his legal authority u/s 133 and following of the Criminal Procedure Code. Under those sections, what the inquiring Magistrate has to consider is whether there is or is not a bona fide private claim to title. If he finds that there is such a bona fide claim, then under the rulings of the Courts he is debarred from proceeding further: see In re Maharana Shri Jaswatsangji Fatesangji 22 B. 988; In re Narayan Jivan Mestri 4 Bom. L.R. 187 and Emperor v. Dost Muhammad 28 A. 98; 2 A.L.J. 599; 202 A.W.N. (1905) ; 2 Cri. L.J. 517. If the Magistrate is of opinion that there is no bona fide claim of private title, then he is to proceed as indicated in the sections of the Code. But what the Magistrate here purports to have done, as we read his report, is this: selecting for his decision certain evidence, and discarding other evidence, because he says that, even if taken by him, he would not believe it, he proceeds to determine the very question of title involved. That was clearly outside his jurisdiction. It was sought to save the order on

the ground that the applicant, though he had notice to appear on the 22nd July, did not appear on that date; and, therefore, it is urged the Magistrate would have been entitled to proceed u/s 136 and to make the order absolute forthwith. That, however, is not what the Magistrate did. On the contrary, he very rightly allowed the applicant a further opportunity to appear before the second class Magistrate, and the applicant did so appear. This concession being made, we are of opinion that matters were in the legal position contemplated by Section 137, and that the second class Magistrate was bound to make the inquiry prescribed by that section. Since no such inquiry was made, we must make the present Rule absolute. This order will not preclude the Magistrates from taking any farther legal action which they may desire to take.