

The Empress Vs. Shibo Behara

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Court : Kolkata

Decided On : Jan-20-1881

Reported in : (1881)ILR6Cal584

Judge : Mitter and ;Maclean, JJ.

Appellant : The Empress

Respondent : Shibo Behara

Judgement :

Mitter, J.

1. Whether the Judge was right or not in postponing the trial after it had once begun, I think this Court has the power to quash an illegal commitment at any stage of a criminal proceeding.

2. In these two cases I am of opinion that the commitments should be set aside on the ground that the sanction for prosecution under Section 211 was illegally given. Whatever might have been said in Nusibunnissa Bihee v. Sheikh Erad Ali (4 C. L. R., 413), the later cases have distinctly laid it down that a sanction for prosecution under Section 211 given without hearing all the witnesses whom a complainant wishes to produce in Court, is illegal. In these cases, therefore, the original orders sanctioning prosecution under Section 211 are illegal. That being so, the commitments are also illegal. I would, therefore, set them aside as recommended

by the Judge.

Maclean, J.

3. The principle involved in these cases is the same as that involved in the case of Chukrodhur Pati just disposed of; and as I am of opinion that any convictions had upon the trials under the commitments which we are asked to quash would be set aside, I think the simplest course is to set aside the proceedings at this stage.

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