

Charles Johns Vs. Emperor

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Court : Kolkata

Decided On : Apr-07-1932

Reported in : AIR1932Cal550

Appellant : Charles Johns

Respondent : Emperor

Judgement :

Mallik, J.

1. This Rule is directed against an order passed by the learned Deputy Magistrate of Darjeeling on 20th August 1931 whereby ha directed issue of summons against the petitioner under Section 182, I. P. C. What happened in the present case was briefly this. The petitioner who is a doctor practising in Darjeeling lodged an information with the local police that during his absence the glass panes of a bath-room of his house had been broken open and on inquiry he 'had ascertained that the carpenter of the firm of Messrs. Madan & Co. had come and broken open the glass pane, and that afterwards he had found that some valuable properties had been missing from his house. The police inquired into the matter and submitted a report saying that the case was a false one. An intimation of this was given to the petitioner who happened to be away at Kurseong at that time. This was on 7th August. On 10th August the petitioner filed a naraji petition before the Deputy Magistrate of Darjeeling. The learned Magistrate however without inquiring into

this naraji petition passed an order on 25th August, the order against which the present Rule has been obtained.

2. The Rule was issued on the ground that the learned Magistrate was not justified in issuing process under Section 182 against the petitioner without inquiring into and disposing of the petitioner's naraji petition of 10th August. This ground must, in my opinion, succeed. It has been held in two recent decisions in *Abdulla v. Emperor* : AIR1932 Cal287 and *Lachmi Shaw v. Emperor* A.I.R. 1982 Cal. 383 that when there is a naraji petition it would be highly improper to prosecute a man under Section 182 without disposing of that naraji petition. This view is in conformity with the view that had been taken in the Pull Bench decision of this Court in the case of *Queen-Empress v. Shamlall* [1887] 14 Cal. 707 (F.B.). Our attention was drawn by the learned advocate who opposed the Rule to a decision of Ouming, J., in the case of *Emperor v. Baharali Biswas* : AIR1931 Cal634 . To begin with, the facts in the 58 Calcutta case were very different from the facts of the; present case. There the matter arose at a very late stage after the man had been prosecuted and actually convicted. In the present case it is against the order of prosecution that the objection has boon taken. Then if we have to choose between the decision in *Emperor v. Baharali Biswas* : AIR1931 Cal634 and the decisions in *Abdulla v. Emperor* : AIR1932 Cal287 and *Lachmi Shaw v. Emperor* A.I.R. 1982 Cal. 383 we must give preference to the decisions in the two latter cases which were decisions of a Division Bench whereas the decision in *Emperor v. Baharali Biswas* : AIR1931 Cal634 was a decision by a Judge sitting singly. The result therefore is that the Rule is made absolute the order of the learned Magistrate dated 25th August 1931 issuing process against the petitioner under Section 182 is set aside.

Remfry, J.

3. I agree.