

Sadananda Mandal Vs. Krishna Mandal

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Court : Kolkata

Decided On : Jun-24-1914

Reported in : AIR1915Cal664,(1915)ILR42Cal381

Judge : Sharfuddin and ;Teunon, JJ.

Appellant : Sadananda Mandal

Respondent : Krishna Mandal

Judgement :

Sharfuddin and Teunon, JJ.

1. This Rule, issued at the instance of the first party to proceedings under Section 145 of the Criminal Procedure Code, called upon the District Magistrate and the opposite party to show cause why the final order made in these proceedings should not be set aside on two grounds, namely, first, that the evidence had not been recorded in the manner provided by Section 336 of the Criminal Procedure Code; and, secondly, on the ground that the Magistrate did not receive the oral and documentary evidence tendered by the petitioner. The District Magistrate has submitted an explanation. From this explanation we find that in fact the trying Magistrate did receive all the evidence, oral or documentary, that was offered. With regard to the first ground what the Magistrate says is that the Subdivisional Magistrate, that is to say, the trying Magistrate, made a memorandum of the evidence in the manner required by Sub-section (3) to Section 356 of the Code of

Criminal Procedure, and that the making of that memorandum should be regarded as a sufficient compliance with the requirements of the law. We are unable to accept this contention. The provisions of Sub-section (3), Section 356 of the Code of Criminal Procedure, apply only to cases in which the evidence recorded under Sub-section (i) is not recorded in the Magistrate's own hand. The provisions of the first Sub-section are imperative, and we are unable to condone the non-compliance therewith. We, therefore, make this order absolute and set aside the order complained of.

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