

**Harendra Narayan Das Vs. Ramjan Khan**

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**Court :** Kolkata

**Decided On :** Aug-20-1913

**Reported in :** AIR1914Cal187,(1914)ILR41Cal433

**Judge :** Coxe and ;Mullick, JJ.

**Appellant :** Harendra Narayan Das

**Respondent :** Ramjan Khan

**Judgement :**

**Coxe, J.**

1. This was a Rule on the District Magistrate of Goalpara to show cause why the conviction of the petitioner for an offence under Section 379, read with Section 109, of the Indian Penal Code, should not be set aside on the ground that there was no dishonest intention in the act complained of. The petitioner has been convicted of abetment of theft and the property said to have been stolen was wood taken from the forest.

2. It appears from the judgment of the Magistrate that it was urged on behalf of the petitioner that he had a right to take wood without a pass. The Magistrate, however, refused to decide whether the petitioner had such a right or not. He says: 'I think it is beyond the province of this Court to adjudicate whether such right exists or not;' and in the conclusion of his judgment he also refused to go into the

question 'whether the tenants have any such right as has been set up in this case.' But he found that inasmuch as the accused had himself taken passes for the removal of wood from the forest, his claim to take wood without a pass could not possibly have been made in good faith. It does not appear to me that the question of good faith really arises in this case. From the passage I have quoted, it is clear that it was the petitioner's case in the Court below that he had a right to take this wood. Before he can be convicted of theft or of causing wrongful gain or wrongful loss, it must in my opinion be found that he had not this right to take the wood. The Magistrate carefully guarded himself from coming to any decision on this point, and therefore it appears to me that whatever the intention and knowledge of the accused was, he cannot be convicted of theft when it has not been found, as a matter of fact, that he was not entitled to the property which he took.

3. In my opinion, the Rule must be made absolute, the conviction and sentence set aside, and the fine, if paid, refunded.

**Mullick, J.**

4. I agree.

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