

Queen-empress Vs. Nowab Jan

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SooperKanoon Citation : sooperkanoon.com/856981

Court : Kolkata

Decided On : Apr-03-1884

Reported in : (1884)ILR10Cal551

Judge : Mitter and ;Maclean, JJ.

Appellant : Queen-empress

Respondent : Nowab Jan

Judgement :

Mitter, J. (Maclean, J., concurring)

1. We have no doubt that the District Magistrate has mistaken the law throughout.
2. It appears that on a charge preferred by Pir Bux, the Police sent up one Nowab Jan for trial, under Section 448 of the Penal Code.
3. Pir Bux subsequently, on 19th December, petitioned the Magistrate (of the first-class), asking that as the case had been amicably settled, and that as he did not wish to proceed with the case, it might be disposed of.
4. The Magistrate accordingly endorsed the petition, 'Compromised; defendant acquitted.'
5. As it appears that Pir Bux was the person described in the third column of the table attached to Section 345, and that the offence is described in the second

column of that table, it is clear that the order of the Magistrate of 20th December is quite correct and legal.

6. Neither Section 259 nor Section 248 of the Criminal Procedure Code has any bearing on the case; as all that is necessary regarding the compounding of the offence that was under investigation is to be found in Section 345, and we do not understand the law to be that no Magistrate under any circumstances has power to allow a case that is sent up by the Police to be withdrawn.

7. The District Magistrate's order purporting to be passed under Section 437 was therefore not warranted for the reasons given above; and it was also ultra vires from the fact that Mr. Beames is a first-class Magistrate and is not therefore inferior to the District Magistrate. To give the District Magistrate jurisdiction under Section 435 to call for a case from another Magistrate, the latter must be 'inferior.' See *Nobin Kristo Mookerjee v. Russick Lall Laha* I.L.R. 10 Cal. 268.

8. We set aside all the proceedings subsequently to the 20th December, including the conviction of Nowab Jan, dated 27th February 1884, and the sentence passed upon him.