

In Re: Petition of Modun Mohun

In Re: Petition of Modun Mohun

SooperKanoon Citation : sooperkanoon.com/859045

Court : Kolkata

Decided On : Dec-10-1878

Reported in : (1879)ILR4Cal376

Judge : Ainslie and ;Broughton, JJ.

Appellant : In Re: Petition of Modun Mohun

Judgement :

Ainslie, J.

1. We are of opinion that the conviction of the petitioner under Section 161, Penal Code, is bad in law. The Magistrate takes it for granted that a poddar of the Bank of Bengal is a public servant within the meaning of Clause 9, Section 21 of the Penal Code. The Sessions Judge has given certain reasons for coming to the same conclusion, but neither Court appears to have thought it necessary to consider the point with reference to any evidence bearing thereon, and the learned Junior Government Pleader, who has appeared to support the conviction, is unable to show that there is any.

2. The Sessions Judge has fallen into error by varying the words of the Act. He says it was the duty of the prisoner to take money paid in on account of Government. The definition of a public servant, which, if any, is applicable to this case, runs 'every officer whose duty it is as. such officer to take on behalf of Government.'

3. It may be that the money was paid by the Court of Wards' manager on account of Government; but it was on behalf of the Bank, and not on behalf of the Government, that it was taken by the accused. He was the servant of the Bank, and if he had in any way failed in his duty, any consequent loss would have fallen upon the Bank, and not upon the Government, which, in making this deposit, was dealing with the Bank as any other constituent might have done.

4. The conviction and sentence are set aside. The fine, if paid, is to be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com