

Emperor Vs. Sheikh Ido

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Court : Kolkata

Decided On : May-24-1912

Reported in : (1913)ILR40Cal71,15Ind.Cas.488

Judge : Holmwood and ;Imam, JJ.

Appellant : Emperor

Respondent : Sheikh Ido

Judgement :

Holmwood and Imam, JJ.

1. We think that the question raised on this Rule can be simply answered by pointing out that the order of discharge made by Mr. Justice Stephen cannot be set aside by any tribunal and does not require to be set aside. * Upon all the authorities an order of discharge does not operate as any bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a Police report or under Section 190 (c) of the Criminal Procedure Code. This was finally settled in the case of Mir Ahwad Hossein v. Mahomed Askari (1902) I.L.R. 29 Calc. 726 by a Full Bench of this Court. If this is the rule of law in the case of Presidency and Provincial Magistrates, where the higher Courts have been specially empowered to interfere and order fresh enquiry, and if in these cases it is unnecessary to set aside the order of discharge or order fresh enquiry, a fortiori it is unnecessary in the case of discharge by the High Court in the exercise of its original criminal

jurisdiction, where there is no authority that can interfere with the order of discharge. We do not order further enquiry in this case, since-it is unnecessary. It is enough for us to lay down that the Magistrate is mistaken in declining jurisdiction which he undoubtedly has, and he is bound to consider and adjudicate on any criminal information properly laid before him against the accused.

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