

**Abdullah Mandal Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/864550](http://sooperkanoon.com/864550)

**Court :** Kolkata

**Decided On :** Apr-16-1913

**Reported in :** (1913)ILR40Cal854

**Judge :** Imam and ;Chapman, JJ.

**Appellant :** Abdullah Mandal

**Respondent :** Emperor

**Judgement :**

**Imam and Chapman, JJ.**

1. This was a Rule calling on the District Magistrate of Hooghly to show cause why the order dated the 6th January, 1913, should not be set aside.

2. Information was given to the police by the complainant, Nasirul Huq, at the thana of Dadpur, in respect of the theft of a bullock belonging (sic) brother-in-law, Pachcowrie Shaikh, by (sic) Abdullah Mandal and Neamul Huq. The police, on such information being recorded, submitted a report to the Magistrate in which they stated that the case against the accused might be true, but that the evidence to prove it was not forthcoming. Thereupon the Subdivisional Magistrate made over the case to Mr. N. K. Bose, an Honorary Magistrate, for the purposes of enquiry and report. The Honorary Magistrate examined a number of witnesses on both sides and then submitted a report to the Subdivisional Magistrate, in which he

expressed his opinion that it was amply proved that the bullock had been purchased by Abdullah, and that therefore he could not recommend a trial of the accused under Section 379 Indian Penal Code. On receipt of this report, the Subdivisional Magistrate ordered the issue of summonses against the petitioners, and in his order remarked that the purchase of the animal by the accused should be established in Court.

3. The proceedings of the Subdivisional Magistrate are open to attack on grounds of law and fact alike. A report having been submitted by the police under Section 173, it was open to the Magistrate to take cognizance of the case under Section 190, Clause (b), of the Criminal Procedure Code. But he did not choose to do so and proceeded to make over the case for enquiry and report, as though the matter he was dealing with was one on a complaint under Section 200 of the Code. The proceedings before the Honorary Magistrate, thereafter, so far as they bear on the case based on a police report, were not in consonance with the provisions of the law. We might have been disposed to overlook the proceedings that were erroneously held before the Honorary Magistrate and should have treated the order of the Subdivisional Magistrate for the issue of summonses against the accused persons as one passed under Section 190, Clause (6), had not the petitioners based their contention for the dropping of these proceedings on another ground as well. They say that the facts disclosed before the Honorary Magistrate do not justify the trial of the accused persons. Ordinarily, we would not be disposed to interfere with the discretion of the Magistrate, if it were not for exceptional circumstances, namely, the examination of a number of witnesses before the Honorary Magistrate having already had the effect of causing the two parties a great deal of trouble. If these proceedings before the Magistrate had disclosed facts which led us to believe that the trial would be in the interest of justice, we should have had no hesitation in allowing the proceedings to go on. But the enquiry by the police as well as by the Honorary Magistrate disclosing the fact that there is no case against the petitioners that could be rightly tried, and the Subdivisional Magistrate not having given sufficient ground for not agreeing with the Honorary Magistrate and the police, we are not disposed to allow the proceedings to go on.

4. The order, therefore, is, that this Rule be made absolute, the order of the Magistrate dated the 6th January, 1913, set aside, and the proceedings stayed. If the petitioners are on bail, they will be discharged from their bail.

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