

Queen-empress Vs. Karamdi

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Court : Kolkata

Decided On : Oct-29-1895

Reported in : (1896)ILR23Cal250

Judge : Ghose and ;Hill, JJ.

Appellant : Queen-empress

Respondent : Karamdi

Judgement :

Ghose and Hill, JJ.

1. This is a reference by the District Magistrate of Mymensingh, at the instance of the Commissioner of the Dacca Division, questioning the propriety of a finding and sentence by the Sessions Judge.

2. We are not aware under what authority the reference has been made. Such references have always been condemned by this Court as irregular. The power given to a District Magistrate to make a reference to the High Court is conferred by Section 438 read with Section 435 of the Criminal Procedure Code. But this clearly refers to a 'proceeding before any inferior Criminal Court;' and notwithstanding the words 'or otherwise,' in Section 438, we do not think that the Legislature ever intended to give to a Magistrate the power to question the propriety of a judgment or sentence by a superior criminal authority, as the Sessions Judge is, and to refer

the proceeding to the High Court for revision. Section 439 read with Section 435 gives to the High Court the authority to examine the record of any proceeding (whether it be of a Sessions or Magistrate's Court, and howsoever it might have been brought up) and interfere with or alter the conviction or sentence or other order, but notwithstanding the use of the words 'or which has been reported for orders,' as in Section 439, it could never have been intended that such report might be made by an inferior criminal authority with respect to a proceeding by a superior authority.

3. We, therefore, decline to interfere in this matter.

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