

**In Re: Poona Churn Pal**

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**SooperKanoon Citation :** [sooperkanoon.com/867182](http://sooperkanoon.com/867182)

**Court :** Kolkata

**Decided On :** Aug-01-1881

**Reported in :** (1881)ILR7Cal447

**Judge :** Morris and ;Tottenham, JJ.

**Appellant :** In Re: Poona Churn Pal

**Judgement :**

**Morris, J.**

1. We are asked to exercise our powers of superintendence under Section 15 of the Charter Act, by remitting certain compensation awarded to two persons, who have been complained against by the petitioner, and by setting aside an order of discharge made by the Presidency Magistrate, and directing the trial of the case to be proceeded with, in the light of a construction which ought to have been put, but was not put, upon an order of sanction to a prosecution made by Mr. Justice Broughton, after judgment passed in a civil suit on the Original Side of the High Court, in which the petitioner was defendant, and the persons complained against, plaintiffs.

2. After hearing the learned Standing Counsel in support of the action taken, and orders passed, by the Presidency Magistrate, and also Mr. Jackson who appeared, and whom we permitted to address us, on behalf of the persons who would be affected by any order directing a further trial of the case, and after

considering the arguments addressed to us in reply by Mr. Lee, we are of opinion that we cannot properly exercise powers of superintendence, under the Charter Act in this matter, and that the application must be rejected.

3. In the first place, Section 168 of the Presidency Magistrates' Act prescribes the course, and it seems to us the only course, which must be taken when an order of discharge made by a Presidency Magistrate is sought to be set aside. The Government alone have a right of appeal, and clearly, as was argued before us, no such special exception would have been made by the Legislature in favor of the Government, if both the government and private individual could obtain the same end by an application invoking the aid of the Court under Section 15 of the Charter Act.

4. Mr. Lee contends, that Section 168 of the Presidency Magistrates' Act relates only to cases in which a trial has been had, and that it has no application to a case, such as the present, in which the order of discharge was given in the course of proceedings preliminary to trial. Mr. Lee refers to the fact that, on the day fixed for the trial, when both parties were before the Court, no examination of the complainant and of his witnesses was made, the reason being that the Presidency Magistrate, upon the view which he took of the sanction given by Mr. Justice Broughton, refused to allow the prosecution to proceed on all the charges specified in the summons.

5. This objection, though, perhaps, started by the Presidency Magistrate himself, was undoubtedly, taken by Mr. Ghose, the counsel for the accused; and this being so, it seems to us, having regard to the provisions of Section 119, Act IV of 1877 On the appearance of both parties on the day fixed for the trial the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show, why he should not be convicted that the trial, in the sense in which the word 'trial' is used in the Act had then commenced. By this objection, we understand the accused to have shown cause why they should not be convicted, and their objection prevailing, they were ordered to be discharged.

6. Then again, in the matter of setting aside the order, which practically amounted to a fine upon the complainant, by which compensation was awarded to the

accused, we think that we are powerless to interfere. The award of compensation is a matter which lies entirely within the discretion of the Presidency Magistrate, and from the statement of the facts of the case, which has been presented to us, we are quite unable to say, that that discretion has been unreasonably, or improperly, exercised. The accused were certainly put to a considerable amount of harassment by being brought on two different occasions before the Court, and on neither occasion did the complainant see fit to prosecute his case. On the last occasion,--that is to say, on the 9th July, even on the view taken by the Magistrate of the limited character of the sanction given by Mr. Justice Broughton, there was nothing to prevent the complainant from adducing evidence against the accused.

7. The Counsel for the complainant admits that he refused to go on with the case, in the hope that the Magistrate would allow an adjournment to enable him to refer to Mr. Justice Broughton, and obtain from him an expression of opinion as to the nature of the sanction granted by him. It seems to us that the Magistrate was quite within his right in refusing to allow the trial to stand over, and his order of discharge was in accordance with law.

8. This order is no bar to further proceedings being taken by the petitioner, if he be so advised, and this renders interference by this Court, under Section 15 of the Charter Act, entirely unnecessary.

9. This application is dismissed, and the rule discharged.