

Narayan Singh and ors. Vs. Emperor

Narayan Singh and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/868207

Court : Kolkata

Decided On : May-08-1924

Reported in : AIR1925Cal191

Appellant : Narayan Singh and ors.

Respondent : Emperor

Judgement :

1. This Rule is directed against the order of the Sessions Judge of Darjeeling dealing with a case which was referred to him under Section 123, Criminal Procedure Code, by the Sub-Divisional Officer of Siliguri. The accused petitioners were directed by the Magistrate to furnish security for good behaviour for three years and in default to be detained in prison. The learned Sessions Judge, on examining the record, has held that the Magistrate was in error in relying on the uncorroborated testimony of an accomplice. He has further held that certain irrelevant evidence was also admitted by the Magistrate. He has then remanded the case for rehearing in accordance with law on the grounds that apart from the evidence of the accomplice and the wrongly admitted evidence there is other evidence which appears to afford material corroboration of the approver in certain respects and it is essential that the whole matter should be reconsidered from a correct point of view. We hold that in passing this order the learned Sessions Judge exceeded the powers given him by the provisions of Clause 3 of Section 123, Criminal Procedure Code. That clause empowers the Sessions Judge to require from the Magistrate any further information or evidence which he thinks

necessary, but; it does not empower him to order a re-hearing of the case. In the present case it does not appear that the learned Sessions Judge inquired either any further information or evidence. If he did so he should have made a definite order stating the information required of the nature of the further evidence to be taken; otherwise he should himself have considered the evidence on the record and passed such order as he thought fit on the basis of that evidence.

2. We accordingly make this Rule absolute. We set aside the order of the learned Sessions Judge remanding the case for re-hearing and direct that he do decide the reference in accordance with law.

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