

Chandra Kumar Ghose Vs. Mohendra Kumar Ghose

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Court : Kolkata

Decided On : Aug-16-1916

Reported in : 39Ind.Cas.317

Judge : Lancelot Sanderson, C.J. and ;Smither, J.

Appellant : Chandra Kumar Ghose

Respondent : Mohendra Kumar Ghose

Judgement :

Lancelot Sanderson, C.J.

1. In this case we think that the Rule should be made absolute.
2. It is a small case--the damage that was done was small; the fine that was imposed was small and the compensation that was awarded was small--and if it had not been for the fact that my learned brother and I, when we granted the Rule, thought that a question of principle was involved, we certainly would not have granted it. But inasmuch as there was an allegation that the Magistrate who tried the case had thought it right at the invitation of both parties to go and make a local inspection as to whether the land upon which the fruit trees were growing was outside the accused's land or within the accused's land, and when he got there, he had a sort of indiscriminate talk with everybody who happened to be present there, which might or might not have affected his judgment in the case, we issued the Rule. The Magistrate in his explanation says: 'I had talks with many persons,

including parties and their Pleaders and Muktears.' But he says that he did not take any notes because he was not allowed to make any notes on the spot, as one of the Pleaders gave him to understand that the case would be surely compromised.

3. We do not think that that is the proper way of trying a case. If it is necessary to have a local investigation, great care ought to be taken by the Magistrate who holds the local investigation to see that he is not approached by an outsider or allows his mind to be affected by outside matters. The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side and the other, and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case. It is quite true, as the learned Pleader pointed out, that this case went on appeal to the superior Tribunal and that Tribunal came to the same decision as the Court of First Instance. But the Court of First instance came to the conclusion upon a most important point in the case, which was a question of fact, after it had held this local inquiry and, when the main question in the case is a question of fact, the Appellate Court must be naturally influenced to some extent by the finding of the First Court upon the question of fact. It is impossible for us to say that the Appellate Court was not influenced by the finding of the First Court upon the question of fact, and if the finding of the First Court was vitiated, then it may be that the finding of the Second Court was also vitiated. For these reasons it is safer to make this Rule absolute and direct that the case be re-tried, unless the parties put their heads together and settle the dispute. Really, in a case like this, where the parties are related to one another and where the matter is such a small one, it is a great pity that further expenses of litigation should be incurred.

Smither, J.

4. I agree.