

JainuddIn and ors. Vs. Keramatulla and ors.

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Court : Kolkata

Decided On : Jan-30-1923

Reported in : AIR1924Cal641,71Ind.Cas.595

Appellant : JainuddIn and ors.

Respondent : Keramatulla and ors.

Judgement :

1. This Rule was granted calling on the District Magistrate and the opposite party to show cause why the order of the District Judge of Sylhet revoking the order of the Munsif granting sanction for the prosecution of the opposite parties should not be set aside and a rehearing of the appeal by the District Judge of Sylhet ordered.

2. The Rule was granted on two grounds. The first of these was that the learned District Judge refused to hear the petitioners' Pleader before passing the order complained of. This ground has not been pressed at the hearing. The next ground was that on the facts and circumstances of the case the Court below ought to have upheld in the interest of the public and of justice the order of the learned Munsif. As the case has been argued, the ground that has been pressed is that in revoking the sanction the learned Judge wrongly held that the fact that the evidence was not strong enough for a successful criminal prosecution was sufficient ground for revoking the sanction. It was urged that this was not the proper way to approach the case and that the learned Judge should have considered not whether the prosecution was likely to succeed but whether a prima facie case has been made

out which was a sufficient justification of removing the bar imposed by the Legislature to a prosecution for perjury. But, as was held in *Sarat Chandra Mandal v. Ram Shashi Roy* A.I.R. 1923 Cal. 45, we can only interfere with the order of the District Judge either under Section 115, Civil Procedure Code, or under Section 107 of the Government of India Act. It appears to us that the ground now taken is not one which would justify our interference under either of these sections.

3. That being so, we must discharge the Rule.

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