

**Yacoob Vs. Adamson**

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**Court :** Kolkata

**Decided On :** Aug-07-1886

**Reported in :** (1886)ILR13Cal272

**Judge :** Prinsep and; Beverley, JJ.

**Appellant :** Yacoob

**Respondent :** Adamson

**Judgement :**

**Prinsep and Beverley, JJ.**

1. Captain Adamson, commander of the Queen of Scots, lost some currency notes from the pocket of his trousers which were in his cabin. He says that he fetched the petitioner before us who was the steward of the ship, and some others, and sent for the Police. The matter, however, proceeded no further at that time, as no sufficient evidence was obtained. The petitioner then left his service, but a fortnight afterwards, in consequence of the changing of some notes, suspicion fell upon him, and he was placed with another man before the Presidency Magistrate on trial for the same theft. In the result, the Presidency Magistrate held that the stolen notes had not been satisfactorily traced, and he consequently acquitted the other person. But with regard to the petitioner, the steward, the Presidency Magistrate stated that he had 'no doubt whatever that it was he who had committed the theft, and the order is that he do undergo six months' rigorous imprisonment.' There is

nothing in the notes of the evidence taken by the Magistrate on this trial on which, so far as we can see, the petitioner could have been legally convicted; or which carries the case against him one step further than when it was first investigated by the Police. The order passed is not appealable, but the matter has come before us as a Court of Revision on an application made by the petitioner who is under sentence. The Code of Criminal Procedure does not provide for the manner in which evidence should be recorded by a Presidency Magistrate in a case in which, the sentence or order is not appealable, but it enacts (Section 370) that instead of recording a judgment in the manner provided for other Courts, a Presidency Magistrate shall record certain particulars, amongst which Clause (i) declares that he shall record a brief statement of the reasons for the conviction. In the case before us, we have no evidence at all on which the petitioner could have been convicted, and the Magistrate, in convicting him, has omitted to record any statement of the reasons for the conviction. Reference may be made to Section 537, which declares that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on revision on account of any error, omission or irregularity in the judgment unless such error, omission or irregularity has occasioned a failure of justice. In the present case it is impossible to say what the result of this error, omission or irregularity on the part of the Presidency Magistrate may or may not have been. As the case now stands before us, there is absolutely no evidence against the petitioner, and there is no statement of any valid reasons on which the conviction could be supported. If a conviction such as this were to be maintained, the powers of this Court as a Court of Revision could never be exercised. We cannot suppose that this was intended by the Legislature. The case of *Empress v. Panjab Singh* I.L.R. 6 Cal. 579 was a case analogous to that now before us, the matter under revision there being an order passed on a summary trial in which the Magistrate had failed to comply with Clause (h), Section 263, 'which required him to ' record a brief statement of the reasons of the conviction.'

2. In that case it was held that the Magistrate should state those reasons in such a manner that this Court on revision may judge whether there were sufficient materials before him to support the conviction. Following that case we are of opinion that the conviction and sentence must be set aside.

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