

Abdul Wahab Vs. Chandia

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Court : Kolkata

Decided On : Aug-17-1886

Reported in : (1886)ILR13Cal305

Judge : Prinsep and; Ghose, JJ.

Appellant : Abdul Wahab

Respondent : Chandia

Judgement :

Prinsep and Ghose, JJ.

1. This case has been referred to the District Magistrate under Section 349 of the Code of Criminal Procedure by the Assistant Magistrate who exercises powers of the second class, and has found the accused guilty under Sections 406, 417 of the Penal Code, the sentence which he can pass being in his opinion inadequate. The District Magistrate is of opinion that the offence committed is under Section 420 of the Penal Code, which is an offence beyond the jurisdiction of the Assistant Magistrate to try.

2. Section 349 of the Code of Criminal Procedure empowers the District Magistrate to pass such judgment, sentence or order in the case as he thinks fit, and as is 'according to law.' Now, although the Assistant Magistrate was not competent to Hold a trial of an offence under Section 420 of the Penal Code, he

was competent to hold an inquiry, and commit to the Court of Sessions, so that he was not entirely without jurisdiction, and could have committed the case instead of referring it to the District Magistrate. The District Magistrate is moreover competent, in a case of this description, to pass such order as he thinks fit, and as is according to law, and he can consequently, if he thinks proper, commit the accused to the Court of Sessions. We may refer the District Magistrate to the cases of *In the matter of Chinnimarigadu* I.L.R. 1 Mad. 289, and *Imperatrix v. Abdulla* I.L.R. 4 Bom. 240.

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