

**Salamatullah Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/874098](http://sooperkanoon.com/874098)

**Court :** Kolkata

**Decided On :** Dec-06-1940

**Reported in :** AIR1941Cal328

**Appellant :** Salamatullah

**Respondent :** Emperor

**Judgement :**

ORDER

1. This rule was issued on the District Magistrate of Noakhali to show cause why an order should not be made discharging a jury and a fresh jury empanelled to try the petitioners. The material facts are that the petitioner was once tried and convicted under Section 325, Penal Code. This verdict was set aside on appeal and the case remanded for retrial. The jury empanelled on the second occasion included the foreman of the jury at the formal trial. When this fact was brought to the notice of the learned Judge he discharged this juror and substituted in his place a person present in Court. He refused however to empanel a fresh jury and directed that the case should proceed. There does not appear to be any legal authority for the course of action taken by the learned Judge. Apart from that consideration it is clearly most desirable that in circumstances of the nature disclosed in the present case the proceedings should be held before an entirely new jury. In the result we make this rule absolute. The order of the learned Judge is set aside and we direct that the trial should take place after an entirely new jury has been summoned and empanelled.

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