

Kangali Molla Vs. Emperor

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Court : Kolkata

Decided On : Dec-09-1938

Reported in : AIR1939Cal340

Appellant : Kangali Molla

Respondent : Emperor

Judgement :

Henderson, J.

1. This is a rule calling upon the District Magistrate, Rajshahi, to show cause why the conviction of the petitioner and the sentence passed on him under Section 182, I.P.C., should not be set aside on grounds 1 and 2 attached to the petition. These two grounds are really tautological and the complaint made by the petitioner is that he ought not to have been put on his trial while the narazi petitions filed by him were undisposed of. We have already, in dealing with another case this morning, said that there are authorities for that proposition. It would certainly be unreasonable to convict a petitioner for giving false information, when there is still a possibility that his own case might be found to be true. We have been through the record and we have found that the petition, loosely called a narazi petition, was actually dismissed by the Magistrate under Section 203, Criminal P.C. It was therefore finished and done with, and there was nothing further to prevent the trial proceeding. We may however observe in passing that inasmuch as no charge was

ever brought against anybody by the petitioner, the petition filed by him was not really a petition of complaint at all.

2. The learned advocate who appeared in support of this rule however relies upon a decision of Mitter J. in *Shekandar Mia v. Emperor* : AIR1933 Cal614 . That decision certainly supports his contention. But, with great respect to the learned Judge, we are of opinion that that case was wrongly decided. We are unable to see how, when a complaint has been dismissed, it can be made a ground for holding up other proceedings. The learned Judge seems to have been influenced largely, because he thought that the accused persons would be prejudiced. In our judgment no question of prejudice can arise. If the accused person was dissatisfied with the order dismissing his complaint he could file an application in revision, and possibly get it set aside and a further enquiry ordered. But when he does not do so, no question of prejudice can arise. With great respect to the learned Judge, he was in effect deciding an application against an order of dismissal rather than an application against a subsequent conviction and sentence. We accordingly discharge this rule.

Bartley, J.

3. I agree.

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