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Court : Kolkata

Decided On : Sep-12-1924

Reported in : (1925)ILR52Cal437

Judge : Suhrawardy and ;Mukerji, JJ.

Appellant : Aswini Kumar Dutt

Respondent : Puti

Judgement :

Mukerji, J.

1. One of the grounds upon which the present Rule has been issued relates to the noncompliance of the provisions of Section 360 of the Criminal Procedure Code in recording the depositions of the witnesses examined in the proceedings.

2. By the terms of Section 356 of the Criminal Procedure Code the evidence of witnesses examined in inquiries under Chapter XII has to be recorded in the manner provided for by that section. Section 360, sub-Section (1), expressly refers to Section 356, and lays down that, as the evidence of each witness taken under Section 356 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall if necessary be corrected. Then follow sub-Sections (2) and (3) Which need not be quoted. Sub-Section does not make any reservation or exception in respect of

evidence recorded in inquiries under Chapter XII, and on the face of it makes Section 360 applicable to all evidence recorded under Section 356. On principle also very little distinction can be made between inquiries under Chapter XII and other inquiries or trials. In my judgment in the case of *H(sic) Lal Ghose v. Emperor* (1924) I. L. R. 52 Calc 159. I have discussed the intention of the Legislature in enacting this provision, and I can see nothing on which I can reasonably make a distinction.

3. The only difficulty is created, as has been urged on behalf of the opposite party to this Rule, by the use of the word 'accused' in sub-Section (1) of Section 360. I am inclined to take the view that the word has been used in its wider significance as meaning a person over whom a Criminal Court is exercising jurisdiction.

4. In my opinion Section 360 of the Criminal Procedure Code is applicable to inquiries held under Chapter XII, and inasmuch as admittedly the provisions of that section have not been complied with, the inquiry was vitiated. The order must, therefore, be set aside and the Rule made absolute.

5. It will be open to the Magistrate to take further proceedings, if there is still any apprehension of a breach of the peace.

Suhrawardy J.

6. I agree.

[But see *Narendra Chandra Rudra Pal v. Sabar Ali Bhuiya*, Full Bench Reference No. 1 of 1925, decided April 8, 1925.]