

(1913) 04 CAL CK 0003
In the Calcutta High Court
Case No : Rev. No. 320 of 1913

Ahmed Husain

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 10-04-1913

Acts Referred:

Citation : (1913) 04 CAL CK 0003

Judgement

1. This is a Rule calling on the District Magistrate to show cause why the order of the 21st December 1912 should not be set aside on the ground that the Sub-Divisional Officer could not take cognizance of the offence under sec. 186 without the sanction of the public servant concerned. The learned Vakil who appears to show cause against the Rule on behalf of the Crown says that this is not a case of sanction and it is not urged that any sanction was granted for this prosecution.
2. The question argued has been whether the prosecution is good as instituted on the complaint of the public servant concerned. The prosecution was for obstructing the peon : but when the document relied on as the complaint is examined, it is found to be merely a report of a peon and contains no express or implied request to the Magistrate to take any action and therefore it does not come within the definition of a complaint under sec. 4, cl. (A) of the Criminal Procedure Code.
3. The result is that the report not being a complaint and there being no sanction, the prosecution under sec. 186 is bad. In the explanation it was contended that the complaint might be made orally inasmuch as the complainant was examined on oath, but when we come to examine his deposition, it does not fulfil the conditions as described by the definition to which we have referred. The result is that the Rule must be made absolute.