
(1909) 06 CAL CK 0075
In the Calcutta High Court

Daya Nath Thakur

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 17-06-1909

Acts Referred:

Citation : (1909) 06 CAL CK 0075

Judgement

1. This is a rule calling upon the District Magistrate to show cause why the prosecution of the petitioners should not be cancelled for the reasons stated in the petition.

2. It appears that proceedings were instituted u/s 107 of the Code of Criminal Procedure against one Mohori Lal Marwari at the instigation of the petitioner, Daya Nath Thakur. In the course of these proceedings the petitioner filed certain rent-receipts. The Magistrate trying the case passed orders binding down Mohori Lal u/s 107, Criminal Procedure, Code Thereupon Mohori Lal applied to the District Magistrate to have the order set aside. The learned Assistant Magistrate treats the matter as one coming u/s 125, Criminal Procedure Code, and calls it a criminal motion. After going into the merits of the application, he came to the conclusion, apparently without hearing Daya Nath Thakur, that the rent-receipts which he had filed were forged, and he concluded these proceedings with the remark that the appeal was allowed" and directed notice to be issued to Daya Nath Thakur to show cause why the should not be prosecuted u/s 471, Indian Penal Code. It appears to us, as has been laid down in the case of Nabu Sardar v. Emperor 34 C. 1 : 11 C.W.N. 25 : 4 C.L.J. 428 : 4 Cr. L.J. 399 : 1 M.L.T. 368 , (decided by a Full Bench), that u/s 125, Criminal Procedure Code, the Magistrate has full power to cancel the bond for reasons which appear to him to be sufficient; but that section does not give him a right to hear an appeal. It is difficult to see in this case, how it can be held that these rent-receipts came before the Magistrate in a judicial proceeding. On this ground alone, we make this rule absolute and direct that the proceedings be set aside.