
(1909) 06 CAL CK 0061
In the Calcutta High Court

Dayanath Thakur

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 17-06-1909

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 125

Citation : (1910) ILR (Cal) 72

Hon'ble Judges : Ryves, J;Caspersz, J

Bench : Division Bench

Judgement

Caspersz and Ryves, JJ.—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 Mohari Lal Marwari at the instance of the petitioner, Dayanath Thakur. In the course of these proceedings the petitioner filed certain rent-receipts. The Magistrate trying the case passed, orders binding down Mohari Lal u/s 107 of the Criminal Procedure Code. Thereupon, Mohari Lal applied to the District Magistrate to have the order set aside, The learned District Magistrate treats the matter as one coming u/s 125 of the 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 Dayanath 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 Dayanath Thakur to show cause why he should not be prosecuted u/s 471 of the Indian Penal Code. It appears to us, as has been laid down in the case of Nabu Sardar v. Emperor ILR (1906) Cal 1. 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.