
(1908) 05 CAL CK 0005
In the Calcutta High Court
Case No : Rev. No. 303 of 1908

Giridhari Marwari

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision : 04-05-1908

Acts Referred:

Citation : (1908) 05 CAL CK 0005

Judgement

1. This is a rule to show cause why an order for further enquiry made by the Magistrate of Bhagalpur on the 22nd February last should not be set aside. The Petitioner is alleged to have abetted the fabrication of a forged bond and to have committed various cognate offences. This case was enquired into by a Deputy Magistrate who, on the 27th August 1906, discharged him. The District Magistrate then ordered a further enquiry into the case to be made. This order was set aside by this Court on the 4th December 1906. The order of this Court was that the order of the District Magistrate directing a further enquiry could not be supported, inasmuch as " it merely states that a farther enquiry is ordered but it gives no reasons whatever on the part of the District Magistrate for differing from the view taken of the case by the Subordinate Magistrate. Moreover it appears in the case that the order was passed by the Magistrate without giving any notice to the accused of the application. We think that certainly in a case of this sort the Magistrate before he passed any order directing a further enquiry ought to have issued a notice to the accused and to have heard what he had to say in opposition to the application." Now the District Magistrate has on the 22nd February last again ordered a further enquiry to be made into the case against the Petitioner, again omitting to giving him a notice or calling upon him to show cause why this order should not be made.

2. Again the propriety of the order is impugned on two grounds, I. L. R. 15 Cal. 608 (1888) that the question of the genuineness of the bond has been tried by the Civil Court which has held it to be a forgery and that the case against the Petitioner cannot proceed without the sanction of the Civil Court, I. L. R. 32 Cal. 1090 (1905) that no notice was given before the further enquiry under sec. 437

was ordered. To this Mr. Sinha for the District Magistrate of Bhagalpur replies I. L. R. 15 Cal. 608 (1888) that the decision of the Civil Court has altered the circumstances and that although the case against the Petitioner cannot proceed as regards the main charge of forgery, or abetment of forgery without the sanction of the Civil Court, the charges against him under sec. 423 of the Penal Code and sec. 82 of the Registration Act can be so proceeded with, I. L. R. 32 Cal. 1090 (1905) that the law does not require notice to be given before an order under sec. 437 can be made (3) that in this case, it was not advisable to give a notice as the Magistrate had received information that the Petitioner was about to abscond. But it would seem us that I. L. R. 15 Cal. 608 (1888) it is desirable if the case against the Petitioner is to proceed that it should not be proceeded with piecemeal and that therefore the sanction of the Civil Court should be obtained to his prosecution on the main charge before any further proceedings against him are taken, I. L. R. 32 Cal. 1090 (1905) though the law does not prescribe the giving of a notice before an order under sec. 437 can be made, the Full Bench decision of this Court in Haridas Sanyal v. Saritulla I. L. R. 15 Cal. 608 (1888), recently followed in Waked Alt v. Emperor I. L. R. 32 Cal. 1090 (1905), does require such a notice to be given, and any order under sec. 437 made without giving such a notice, must under the rulings of this Court be set aside. (3) The notice can be given, and an opportunity afforded to the Petitioner to show cause why the order for further enquiry should not be made, without impropriety after his arrest and after he is brought before the Court. We accordingly make the rule absolute and set aside the order of the Magistrate of Bhagalpur, dated the 22nd February last, complained of.