

(1928) 12 PAT CK 0010
In the Patna High Court

Harimohan Biswas

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 21-12-1928

Acts Referred:

Penal Code, 1860 (IPC) — Section 447

Citation : 115 Ind. Cas. 556

Hon'ble Judges : Fazl Ali, J

Bench : Single Bench

Judgement

Fazl Ali, J.—The petitioner has been convicted u/s 447 of the Indian Penal Code and sentenced to pay a fine of Rs.20.

2. The main point argued before me on behalf of the petitioner is that although it was open to the trial Court to hold a local inspection he could not have got the land measured in his presence and based his decision on the result of the measurements. It is urged that by doing so the learned Magistrate had converted himself into a witness and the results arrived at by the Magistrate could not be relied on for the purpose of deciding the case without the accused having been given an opportunity to test the accuracy, of the measurements made on the spot by the Magistrate. The learned Vakil for the petitioner refers me to the decision of this Court in Ambika Bala Dasi Vs. Gobind Naik and Others, in which Wort, J., observed that when a Magistrate had made a local enquiry and used that not for the purpose of understanding the evidence but for the purpose of obtaining information which did not appear from the evidence of the witnesses, the Magistrate had made himself a witness in the case and the procedure was quite irregular and in adopting that he went beyond the powers which are granted to him by the Code of Criminal Procedure. It was also held in that case that the whole trial had been vitiated on account of the irregular procedure followed by the Magistrate. I entirely agree with the opinion expressed by Wort, J., in the case and in this view of the case allow the application, set aside the conviction and sentence and direct that the petitioner be re-tried by come

Magistrate other than the Magistrate who decided the case. The fine, if paid, will be refunded.