

(1924) 07 CAL CK 0002
In the Calcutta High Court

Hriday Govinda Sur

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 03-07-1924

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 539B(2)

Citation : (1925) ILR (Cal) 148

Hon'ble Judges : Newbould, J; Mukerji, J

Bench : Division Bench

Judgement

Newbould and Mukerji, JJ.—This Bale must be made absolute on the second of the two grounds on which it was granted, namely, that the trial Magistrate did not comply with the provisions of Section 539B. It appears that the trying Magistrate inspected the place under the provisions of that section, and also that he drew up a diagram and made an inspection note thereon. But he omitted to comply with the provisions of the second clause of this section and the note did not form part of the record of the case. This provision in the section is in our opinion mandatory, and the failure to comply with this express direction of law was an illegality, and not an irregularity which could be cured if we held that there was no prejudice to the accused.

2. We, accordingly, set aside the conviction and sentence passed on the petitioner, and direct that the accused be re-tried according to law. The fine, if paid, will be refunded.