

(1887) 06 CAL CK 0018
In the Calcutta High Court

In Re: Iswar Chunder Guho and Others

Date of Decision : 30-06-1887

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 193, 199, 526

Citation : (1887) ILR (Cal) 653

Hon'ble Judges : W. Comer Petheram, C.J.; Ghose, J

Bench : Division Bench

Judgement

1. This rule was obtained to set aside certain pending proceedings taken against two persons for perjury. They have been ordered to be prosecuted, but no commitment has taken place, and the question is whether there is any evidence of their having committed perjury. What is alleged is that they have made an affidavit under the sanction of an oath or affirmation before the Deputy Magistrate who was enquiring into the case of one of them for the purpose of intimating to him that he intended to apply u/s 526 of the Code of Criminal Procedure to have the case removed for trial to some other Court.
2. Upon that statement of the case the question arose whether he had power to administer an oath to a person for the purpose of swearing an affidavit so as to make it binding upon him u/s 199 of the Indian Penal Code.
3. We have searched the Code and have enquired about this matter, but we can find no power in a Deputy Magistrate to administer an oath to a person making a declaration in the shape of an affidavit.
4. Under these circumstances we do not see how this case can come u/s 199 of the Indian Penal Code, inasmuch as this was not a declaration which any public servant was bound or authorised by law to receive as evidence of the facts stated in it.
5. Under these circumstances we think that upon the admitted facts of this case these persons are not alleged to have made any affirmation or taken any oath within the meaning of the Penal Code, and therefore they are not liable to prosecution for perjury u/s 199 or Section 193. The proceedings pending before

the Deputy Magistrate against Iswar Chunder Guho and Sarat Chunder Bhoomick will, therefore, be quashed.