
(1929) 08 CAL CK 0002
In the Calcutta High Court

Jamir Sheik and Others

APPELLANT

Vs

Murari Mohan Chaudhury and Another

RESPONDENT

Date of Decision : 01-08-1929

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 526(8)

Citation : AIR 1929 Cal 778

Judgement

1. The question raised in this rule is whether Clause (8), Section 526, Criminal P.C., applies to proceedings u/s 145, Criminal P.C. The words in Clause (8) as they stood before the amendment of 1923 were:

If in any criminal case or appeal, before the commencement of the hearing &c.

2. By the amendment aforesaid these words have been altered into:

If in the course of any enquiry or trial or before the commencement of the hearing of any appeal &c.

3. The introduction of the word "enquiry" in place of the words "any criminal case" may ordinarily be taken to have been intended for the purpose of including proceedings u/s 145, Criminal P.C., but the rest of the clause if read properly would militate against this view. Proceedings u/s 145, Criminal P.C., are no doubt proceedings by way of enquiry. But then the words of Clause (8), Section 526, such as "the complainant" "the accused" and perhaps also the word "public prosecutor" would be wholly inapposite in connexion with proceedings u/s 145, Criminal P.C. The parties to proceedings u/s 145 are described as parties in that section and use of the words complainant "accused" and perhaps also the word "public prosecutor" and the non-mention of the word "party" in the latter part of Clause (8) makes it perfectly clear that it was not the intention of the legislature to include proceedings u/s 145, Criminal P.C., within the meaning of the clause. For this reason we are of opinion that the contention that has been urged on behalf of the petitioner, which is to the effect that it; was obligatory on the learned Magistrate to grant an adjournment on receipt of the application filed by

the petitioner intimating to him that an application would be made for transfer u/s 526 and, asking him to adjourn the case for that purpose, should be overruled, and the rejection of that application cannot be held to have been in the violation of the provisions of Code. Apart from Clause (8), Section 526 the petitioner had no case whatsoever because in the application that was made asking for an adjournment to enable the petitioner to move this Court for transfer no ground whatsoever was stated and also because the said application was made at a very late stage of the proceedings, after the evidence on behalf of the opposite party, which had been taken on two different dates, was closed. We are of opinion that there is no substance in this rule. It is accordingly discharged.