
(1902) 06 CAL CK 0016
In the Calcutta High Court
Case No : Criminal Revision No. 361 of 1902

Kailas Kurmi

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 18-06-1902

Acts Referred:

Citation : (1902) 06 CAL CK 0016

Judgement

Harington and Brett, JJ.—In this case a Rule was issued calling upon the District Magistrate to show cause why the conviction and sentence should not be set aside or altered, or such other order passed as to this Court might seem fit--first, on the ground that the prosecution for the offence u/s 186 had no previous sanction and was not on the complaint of the public servant concerned within Section 195 and secondly, that no order authorizing the peon to cut the crops had been produced or proved in the case and thirdly, that separate sentences should not have been passed.

2. In our opinion the Rule must be made absolute on the first ground. "Complaint" is defined by Section 4 of the Code of Criminal Procedure and it is clear that there was in this case no complaint of a public servant taking "complaint" as defined in the Code of Criminal Procedure. The objection to the conviction therefore is good. The point was duly raised in the Lower Courts and decided against the Petitioner and in our opinion was decided wrongly and the Rule must be made absolute on that ground.

3. As to the other point, the conviction u/s 143 is questioned on the ground that the authority of the peon was not properly proved in the case and this rests on a somewhat different footing. It does not appear to us that this point was taken in the Courts below; but having regard to the circumstances of the case and the fact that these persons were sentenced to one month's imprisonment, out of which they have been imprisoned from 19th March to 14th April, we think we may with propriety reduce the sentence passed in respect of this offence to that which the Petitioners have already undergone.

4. The result is that the Rule as regards the conviction u/s 186 is made absolute and the sentence passed on the Petitioners under that section is set aside. With respect to the conviction u/s 143, the Rule is made absolute by reducing the sentence of imprisonment to that, which has already been suffered by the Petitioners.