
(1898) 12 CAL CK 0004
In the Calcutta High Court

Kanai Das Bairagi and Another

APPELLANT

Vs

Radha Shyam Basack

RESPONDENT

Date of Decision : 05-12-1898

Acts Referred:

Penal Code, 1860 (IPC) — Section 482, 486

Citation : (1899) ILR (Cal) 232

Hon'ble Judges : O''Kinealy, J; Banerjee, J

Bench : Division Bench

Judgement

O''Kinealy and Banerjee, JJ.—This is a rule calling upon the District Magistrate to show cause why the conviction and sentences in this case should not be set aside on the ground that the facts found do not amount to the offences of which the petitioners have been convicted, or why the sentences passed should not be reduced or otherwise altered.

2. It appears that there is a well known Bengali Primer by one Ram Sundar Basack, and it has been found that this book has a property mark. The applicants are found to have sold large numbers of this book with a perfect knowledge that the book they sold was not the real book, but a book purporting to be the real one, and they were convicted of offences under Sections 482 and 486 of the Penal Code, and also of abetment of those offences u/s 109.

3. It has been argued in this Court that books are not goods under Act IV of 1889. "Goods" is defined in that Act to be anything which is the subject of trade or manufacture; and although it was not argued that in ordinary language books are not the subject of trade, yet it was said that they were not the subject of trade within the meaning of that Act. "Trade" is not defined, and we must, therefore, take the ordinary dictionary meaning of that word. That being so, there can hardly be any doubt that books are the subject of trade and of a very large trade in Bengal, therefore books are covered by the word "goods."

4. The convictions entered up against the accused are of three kinds: One, for

using a counterfeit property mark, the second for selling the book with a counterfeit property mark, and the third for abetment of those offences. But we think that the conviction in this case ought simply to be a conviction u/s 486, and we accordingly set aside the convictions under Sections 482 and 109.

5. The result, therefore, is that the applicants will remain convicted u/s 486 and will suffer rigorous imprisonment for three months; and they will have to be taken into custody and serve out the remainder of the sentence.