

(1933) 04 CAL CK 0002
In the Calcutta High Court

Mofizuddin Mondal and Another

APPELLANT

Vs

Sekandar Molla

RESPONDENT

Date of Decision : 10-04-1933

Acts Referred:

Citation : AIR 1934 Cal 133 : 147 Ind. Cas. 1095

Hon'ble Judges : Pearson, J

Bench : Single Bench

Judgement

Pearson, J.—A complaint is made by the petitioners in this case that after the conclusion of the arguments the Magistrate allowed P.W. No. 2 who had already been examined--a man named Maula Bux--to give further evidence and to produce and prove a document in spite of objections taken by the defence. The counter-affidavit which has been put in alleges that the defence did not object to this evidence at the time nor was the accused prejudiced by this further examination of the witness by the Court. So far as the order-sheet goes it appears that on November 5, one defence witness was cross-examined. Then this witness who was present in Court was called by the Court for examination and he was examined for the ends of justice to prove this document to which reference has been made. Subsequent to this, arguments were heard. Then a petition was filed on behalf of the defence in which exception was taken to the calling of this prosecution witness and the filing of this document on the ground that they had no opportunity of dealing with the matter. So far as the record of the evidence goes it does not appear whether after this additional evidence was given by the witness Maula Bux, the defence were asked to cross-examine or whether they applied to cross-examine or whether cross-examination was refused.

2. The record in that particular is unsatisfactory. It is true that the counter-affidavit again says that the defence lawyer was asked to cross-examine the witness, but in that event one would certainly expect to find some reference to that either in the record or in the order sheet. It is said that the defence would

have had no prejudice owing to what was done because the document was a very old one and was known to the parties. It appears to me that having regard to the fact that at this very late stage in the case this document was admitted in evidence called at the request of the prosecution and having regard to the fact that the Magistrate says that he admits the document as it will help his judgment, he should have been particularly careful to see that the accused were satisfied that they were being treated fairly. He should have ascertained from them as to whether there was any evidence that they wished to give in rebuttal apart from the question of cross-examining the witnesses and should have then considered, if necessary, whether an adjournment was not a proper procedure to take in order to give them an opportunity of adducing any evidence that there might have been. I have not seen the document and I am not able to say that the learned Advocate for the opposite party is right when he says that it was not a matter whereby the defence were prejudiced, even though it was admitted at such a late stage.

3. On the whole therefore the Rule will be made absolute to this extent that the conviction and sentence will be set aside and the fine if paid will be refunded and the matter will be re-heard from the point where the examination of this witness, Maula Bux was concluded on November 5, 1932, in the light of the remarks which I have made above, so as to give the accused an opportunity of adducing evidence, if they are so advised, in regard to this additional bit of evidence contained in the document which was admitted on that occasion.