
(1942) 05 CAL CK 0001
In the Calcutta High Court
Case No : Criminal Revision No. 149 of 1942

Nawabali Hazi

APPELLANT

Vs

Khatun Bibi

RESPONDENT

Date of Decision : 08-05-1942

Acts Referred:

Citation : (1942) 05 CAL CK 0001

Judgement

1. This Rule was issued upon the District Magistrate of Dacca to show cause why prosecution of the Petitioner under sec. 323, I.P.C., should not be dropped. The material facts are that there were two cross-cases instituted, one by the present Petitioner and one against the present Petitioner. Both cases were transferred to the same Magistrate for disposal. The learned Magistrate recorded evidence in the other case and kept the case against the present Petitioner pending in his file. After a number of adjournments the learned Magistrate disposed of the other case and then on the 7th July, 1941, passed the following order:

In view of the judgment passed in the counter-case the accused are acquitted under sec. 258, Cr. P.C.

2. Subsequently on an application for revival of the case the learned Magistrate passed the following order:

In the order of 7th July, 1941, the wording "acquitted" amounted as discharged under sec. 259, Cr. P.C.

Later

Seen petition of the complainant for revival of the case. Seen the order of Appellate Court. The accused have been acquitted in appeal. The prayer is granted and the case is revived. Summon the accused persons under sec. 323, I.P.C.

3. An application was made to the Magistrate on the 18th November, 1941, apparently under sec. 403, Cr. P.C., praying that the proceedings be dropped on

the ground that the accused persons had already been acquitted. No order was passed on that application. A further application was then made to the learned Sessions Judge to set aside the order of revival of the case. That application was rejected.

4. The only question for our consideration is whether the order of acquittal passed on 7th July, 1941, could be treated either as a nullity or as an order of discharge by the Magistrate who passed it.

5. In our opinion the learned Magistrate at the time intended to pass a final order of acquittal on the view that he had taken regarding the evidence recorded in the cross-case. It is true that he had ignored entirely the procedure laid down in Chapter XXI, Cr. P.C. and that he had not complied with the provisions of sec. 258 of the Code, nor had he complied with the provisions under which he was entitled to pass an order of discharge under sec. 253 or 259, Cr. P.C.

6. In our opinion it must be held that the order of acquittal was passed by a Court of competent jurisdiction even though it was passed after an irregular procedure, and as such that order of acquittal cannot be set aside by the Magistrate who passed it, nor can it be treated by him as a nullity nor as an order different from the one which he had passed.

7. In this view of the case sec. 403, Cr. P.C., is a bar to a further trial of the present Petitioner on the same facts. The Rule is accordingly made absolute. Let further trial of the Petitioner be stayed until the order of acquittal passed on the 7th July, 1941, is set aside by a competent Court.