

(1919) 02 CAL CK 0027
In the Calcutta High Court

Peary Lal Mullick	Vs	APPELLANT
Surendra Krishna Mitter and Others		RESPONDENT

Date of Decision : 14-02-1919

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133, 137

Citation : 53 Ind. Cas. 160

Hon'ble Judges : Syed Shamsul Huda, J;Richardson, J

Bench : Division Bench

Judgement

1. This Rule relates to an order made in proceedings initiated u/s 133 of the Criminal Procedure Code, By a conditional order made under that section, the petitioner was directed to remove an obstruction from a riverside ghat as being part of a public way. In showing cause against the order u/s 137, the petitioner claimed that the ghat was his private property and denied that the public had a right of way over it. The question so raised was a question of title and, therefore, as the Magistrate very properly recognised, the further question arose whether the petitioner's claim was a bona fide claim or whether it was in the usual phrase a mere pretence to oust the Magistrate's jurisdiction". He decided that further question, however, as a preliminary question without going into evidence. His conclusion was in favour of the petitioner's good faith, and he made an order so declaring and further directing that unless the second party sought to establish his right in the civil Court within six months, "his bona fides will be questioned again by this Court."

2. The petitioner does not complain of this order so far as it upholds his good faith, but he objects to so much of the order as throws upon him the burden of establishing his claim in the Civil Court.

3. In our opinion, regard being had to the circumstances, the Magistrate should not have made this order in the form which he made it without taking such evidence as might be adduced before him by one side or the other.

4. We, therefore, set aside the order and remit the case to the Magistrate to be taken up from the point at which it stood before the order was made, and disposed of in accordance with law.