
(1912) 06 CAL CK 0064
In the Calcutta High Court

Raslu Baksh

APPELLANT

Vs

The Municipal Board of Chapra

RESPONDENT

Date of Decision : 21-06-1912

Acts Referred:

Citation : 15 Ind. Cas. 796

Hon'ble Judges : Imam, J;Holmwood, J

Bench : Division Bench

Judgement

1. We are of opinion that this Rule must be made absolute on the first ground on which it was issued. It was not necessary for the learned Magistrate to put forward the plea that the powers of the Chairman had been delegated to the Vice-Chairman because that was not the point on which the Rule was issued. But if he did put forward such a plea, he" should have stated having regard to the ruling in Kherode Prosad Paul v. The Chairman of the Howrah Municipality 20 C. 448, that this delegation had. been lawfully made in writing; possibly as the first ground of the Rule had to do with the sanction in writing he may have meant that this delegation was made according to law. However, the Rule did not call upon him to show cause on that ground.

2. The point in this case is that, supposing the Vice-Chairman to have authority, we have no reason to suppose he has not, he must sanction the prosecution in writing; and there is no such sanction on the record. The only evidence of sanction of prosecution by a public authority is a writing under the seal ", and signature of that authority. We are wholly unaware of any procedure by which " the complainant can come before a Magistrate and say, I have got the sanction of the public authority for this prosecution, and not be required to produce any writing showing that such sanction has been given. Here there is a tabular form which is called the form of prosecution. There is the name, whether of the accused or the complainant is not shown; the second head "prosecute," presumably the charge which is laid against the man; the cause; names of the witnesses; the date: and column of remarks; the "Chairman or Vice-Chairman;"

and in this column of remarks are the words,--"I have seen myself," signed Shama Churn Ghosh Who Shama Charn Ghosh is we do not know and we do not wish to inquire. But this certainly is not authority, written or other-wise, showing the consent of the Commissioners or the Vice-Chairman on their behalf to a prosecution,

3. On this ground, the order of the lower Court must be discharged. The fine, if paid, must be refunded.

4. In Rule No. 747, the order of Shama Churn Ghosh is different. Instead of saying, "I have seen myself", he says, "prosecute". This does not seem to meet the law any more than the other. The authority which he has is to convey the sanction of the Commissioners and not to pass any order of any kind, and he must convey that sanction under his own seal and signature to the Magistrate.

5. This Rule will also be made absolute on the same ground. The fines, if paid, will be refunded.