
(1902) 06 CAL CK 0003
In the Calcutta High Court
Case No : Rev. No. 328 of 1902

Saraswati Debi

APPELLANT

Vs

Maharaja Durga Churn Laha and Others

RESPONDENT

Date of Decision : 12-06-1902

Acts Referred:

Citation : (1902) 06 CAL CK 0003

Judgement

1. This rule was issued to show cause why a proceeding of the Munsif under sec. 476 of the Code of Criminal Procedure, directing the prosecution of the Petitioner under sec. 174 of the Indian Penal Code, should not be set aside, on the ground that upon the facts set forth in the proceeding no offence under that section had been committed by the Petitioner. The facts are as follows:--The Petitioner was Defendant in a suit pending before the Munsif. The Plaintiffs desired that she might be examined as Defendant and applied for the issue of a commission for that purpose. The commission was issued, and the Commissioner, it appears, showed a certain notice to her pleader, and obtained the pleader's signature thereupon. The notice was to the effect that the Commissioner had been appointed to take the deposition of the Defendant, that the sitting of the commission would be held on a certain date and at a certain time at the residence of the Defendant, where the parties with their respective pleaders were requested to be present. When the Commissioner arrived at the residence of the Defendant, he found that the door of the house was shut and admission was not granted. On the application of the Plaintiffs the Munsif instituted proceedings against the Petitioner for an offence under sec. 174 of the Indian Penal Code. That section relates to the punishment of a person who being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant to issue the same, intentionally omits to attend at that place or time.

2. It seems to us that on the facts the Petitioner did not commit an offence under that section. It is not shown in the first place that the Petitioner was cognizant of

the issue of the notice in question. The Munsif refers to the provisions of sec. 40 of the CPC as providing that processes served on the pleader of any party shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person. It does not however by any means follow that because such a service would be effectual for all purposes in relation to the suit or appeal, it would also be effectual for the purpose of rendering a person liable to punishment under sec. 174 of the Indian Penal Code. Again, the notice can scarcely be said to have been served upon the pleader. It was, moreover, not addressed to any particular person. Lastly, we know of no authority under which the Petitioner could be compelled to allow the commission to hold its sitting in her private residence without her own consent. It appears from the Commissioner's report that the Petitioner was said to be in her house at the time, and the matter really charged against her is, not that she was not present, but that she kept the door of her house shut in such a way that the Commissioner could not hold his sitting there.

3. We think that on these facts no conviction could be had against the Petitioner under the provisions of sec. 174, and therefore the proceeding under sec. 476 is bad. The rule is made absolute and the proceeding is set aside.