
(1870) 04 CAL CK 0004
In the Calcutta High Court

The Queen

APPELLANT

Vs

Chandra Sekhar Roy

RESPONDENT

Date of Decision : 23-04-1870

Acts Referred:

Citation : (1870) 04 CAL CK 0004

Judgement

L.S. Jackson, J.—It appears to me that the opinion expressed by the Magistrate in making this reference is correct, and that the Assistant Magistrate against whose Court an offence punishable u/s 174 of the Indian Penal Code was committed, was not competent to take cognizance of that offence, but was bound, u/s 171 of the Code of Criminal Procedure, if he was of opinion that there was sufficient ground for investigating such charge, to send the case for investigation to a Magistrate having power to try or commit for trial; and it seems to me that the section just mentioned clearly contemplates the sending of such case before a Magistrate, not being the Magistrate against whose Court the offence was committed. It is, undoubtedly, true that, in *Bajoo Baul v. Gugun Misser* 8 W.R., Cr.R., 61, I held a different opinion; but, on reconsidering the matter, I think that that opinion was incorrect; and having consulted Mr. Justice Hobhouse, who was the Judge sitting with me on that occasion, I have his authority for saying that he concurs with me in overruling that case. It appears to me, now, that the provisions of section 171 recognize the general principle that no one should be a judge in a case in which he is himself interested. The only exceptions to that rule which are allowed, are to be found in section 163, where, from the necessity of the case, a Court, civil, criminal, or revenue, is empowered to take immediate and summary notice of offences of certain descriptions committed in view, or in the presence of the Court itself; and in section 172, where the Court of Session is empowered "to charge a person for any such offence," that is, offences of the kind specified in sections 168, 169, and 170 committed before it, or under its own cognizance, if the offence be triable by the Court of Session exclusively, and to commit "or hold to bail and try such person upon its own charge," probably the exception in favor of the Court of

Sessions is based upon the fact that that Court either acts with the aid of Assessors or tries by Jury.

2. The case of Queen v. Tajumaddi Lahori 1 B.L.R., A.Cr., 1 has been referred to. It appears to me that there has been some misconception as to the ground on which that case was decided. I do not, therefore, refer to it as an authority; but for the reasons just stated, I am of opinion that the Assistant Magistrate was not competent himself to deal with the case, but he ought to have sent it for trial before another Magistrate.